By Mr. RIVERS:

H. R. 5011. A bill to amend the Civil Service Retirement Act of May 29, 1930, as amended, to provide annuities for those civilian employees engaged in hazardous occupations in any branch of the Federal service, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. WINSTEAD:

H. R. 5012. A bill to amend the Navy ration statute so as to provide for the serving of oleomargarine or margarine; to the Committee on Armed Services.

By Mr. HART:

H. R. 5013. A bill to authorize the President to proclaim regulations for preventing collisions at sea; to the Committee on Merchant Marine and Fisheries.

By Mr. POULSON:

H. R. 5014. A bill to provide benefits for certain Federal employees of Japanese ancestry who lost certain rights with respect to grade, time in grade, and compensation by reason of their evacuation from military areas during World War II; to the Committee on Post Office and Civil Service.

By Mr. JAVITS:

H. R. 5015. A bill for the establishment of a Commission on Revision of the Antitrust Laws of the United States; to the Committee on the Judiciary.

By Mr. RICHARDS:

H. J. Res. 304. Joint resolution authorizing and directing the performance of an agreement with the Republic of Panama regarding the relocation of the terminal facilities of the Panama Railroad in the city of Panama; to the Committee on Foreign Affairs.

By Mr. FLOOD:

H. Res. 362. A resolution creating a select committee to conduct an investigation and study of the disappearance of the report, relating to the Katyn massacre, dictated by Lt. Col. John H. Van Vliet, Jr., on May 22, 1945; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. JAVITS:

H. R. 5016. A bill for the relief of Fred Deckwitz; to the Committee on the Judiciary.

By Mr. O'TOOLE:

H. R. 5017. A bill for the relief of Jose dos Barros Lopes; to the Committee on the Judiciary.

H. R. 5018. A bill for the relief of Antonio Felope Moises; to the Committee on the Judiciary.

By Mr. VAIL:

H. R. 5019. A bill for the relief of Stavrula Perutsea; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

371. Mr. FELLOWS presented a resolution by Maine Federation of Women's Clubs at Poland Springs, Maine, relative to wise exercise of freedom, which was referred to the Committee on Foreign Affairs.

SENATE

WEDNESDAY, AUGUST 1, 1951

The Chaplain, Rev. Frederick Brown Harris, D. D., offered the following prayer:

Our Father God, we would lift our gaze from the valley of the daily round to the far horizon of our fairest dreams, from the tyranny of drab details to the glory of the heavenly vision, to which we dare not be disobedient. Pressed by the practical problems which crowd our hours and which cry for solution, we would keep clear in our vision and faith the eternal things amid the tempests of the temporal.

Teach us the secret of dwelling in a world full of hate and, yet, not becoming hateful persons. Giving our best ability to the peoples' good, may we rise above life's bitterness by an unshakable belief in the shining splendor of humanity. We ask it in the Name which is above every name. Amen.

THE JOURNAL

On request of Mr. MCFARLAND, and by unanimous consent, the reading of the Journal of the proceedings of Monday, July 30, 1951, was dispensed with.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Miller, one of his secretaries, and he announced that the President had approved and signed the following acts:

On July 30, 1951:

S. 259. An act to fix the responsibilities of the Disbursing Officer and of the Auditor of the District of Columbia, and for other purposes;

S. 261. An act to amend section 7 of an act entitled "An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1903, and for other purposes," approved July 1, 1902;

S. 488. An act to increase the fee of jurors in condemnation proceedings instituted by the District of Columbia;

S. 490. An act to amend the act entitled "An act to regulate the practice of podiatry in the District of Columbia";

S. 494. An act to provide for the appointment of a deputy disbursing officer and assistant disbursing officers for the District of Columbia, and for other purposes; and

S. 573. An act to amend the act entitled "An act to regulate barbers in the District of Columbia, and for other purposes," approved June 7, 1938, and for other purposes.

On July 31, 1951:

S. 262. An act to amend section 3 of an act authorizing the Commissioners of the District of Columbia to settle claims and suits against the District of Columbia, approved February 11, 1929, and for other purposes; and

S. 1717. An act to amend and extend the Defense Production Act of 1950 and the Housing and Rent Act of 1947, as amended.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Snader, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 4329) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of such District for the fiscal year ending June 30, 1952, and for other purposes, agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. BATES of Kentucky, Mr. YATES, Mr. FURCOLO, Mr. CANNON, Mr. STOCKMAN, and Mr. WILSON of Indiana were appointed managers on the part of the House at the conference.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H. R. 629) to authorize the sale of certain allotted land on the Blackfeet Reservation, Mont.

The message also further announced that the House had passed the following bills and joint resolution, in which it requested the concurrence of the Senate:

H. R. 2094. An act to amend the act of August 7, 1946, so as to authorize the making of grants for hospital facilities, to provide a basis for repayment to the Government by the Commissioners of the District of Columbia, and for other purposes; and

H. R. 4484. An act to confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, to provide for the use and control of said lands and resources, and to provide for the use, control, exploration, development, and conservation of certain resources of the Continental Shelf lying outside of State boundaries; and

H. J. Res. 303. Joint resolution to provide housing relief in the Missouri-Kansas-Oklahoma flood disaster emergency.

ENROLLED BILL SIGNED

The message further announced that the Speaker had affixed his signature to the enrolled bill (H. R. 629) to authorize the sale of certain allotted land on the Blackfeet Reservation, Mont., and it was signed by the Vice President.

HOUSE BILLS REFERRED

The following bills were each read twice by their titles and referred as indicated:

H. R. 2094. An act to amend the act of August 7, 1946, so as to authorize the making of grants for hospital facilities, to provide a basis for repayment to the Government by the Commissioners of the District of Columbia, and for other purposes; to the Committee on the District of Columbia.

H. R. 4484. An act to confirm and establish the titles of the States to lands beneath navigable waters within State boundaries and to the natural resources within such lands and waters, to provide for the use and control of said lands and resources, and to provide for the use, control, exploration, development, and conservation of certain resources of the Continental Shelf lying outside of State boundaries; to the Committee on Interior and Insular Affairs.

COMMITTEE MEETING DURING SENATE SESSION

On request of Mr. LEHMAN, and by unanimous consent, the Labor and Labor-Management Relations Subcommittee of the Committee on Labor and Public Welfare was authorized to meet this afternoon during the session of the Senate.

TRANSACTION OF ROUTINE BUSINESS

Mr. MCFARLAND. Mr. President, I ask unanimous consent that Senators be permitted to make insertions in the RECORD, and transact routine business, without debate, and that the time occupied in doing so not be charged to either side in connection with the business for today, Senate bill 719.

The VICE PRESIDENT. Without objection, it is so ordered.

EXECUTIVE COMMUNICATIONS, ETC.

The VICE PRESIDENT laid before the Senate the following letters, which were referred as indicated:

REPORT ON ASSISTANCE TO UNITED STATES MARITIME INDUSTRY

A letter from the President of the United States, transmitting a report on a study of

the assistance to the United States maritime industry, prepared by the Secretary of the Treasury in consultation with the Secretary of Commerce (with accompanying papers); to the Committee on Interstate and Foreign Commerce.

INCLUSION OF NORTH FORK-KINGS RIVER DEVELOPMENT AS PART OF CENTRAL VALLEY PROJECT, CALIFORNIA

A letter from the Secretary of the Interior, transmitting a draft of proposed legislation to authorize the Secretary of the Interior to undertake the North Fork-Kings River development, California, as an integral part of the Central Valley project, and for other purposes (with an accompanying paper); to the Committee on Interior and Insular Affairs.

REPORT ON TORT CLAIMS PAID BY DEPARTMENT OF THE ARMY

A letter from the Secretary of the Army, transmitting, pursuant to law, a report on tort claims paid by the Department of the Army, for the fiscal year 1951 (with an accompanying report); to the Committee on the Judiciary.

REPORT ON STOCKPILING PROGRAM

A letter from the Chairman of the Munitions Board, Washington, D. C., transmitting, pursuant to law, a report on the stockpiling program, together with a confidential statistical supplement thereto, for the period January 1 to June 30, 1951 (with accompanying papers); to the Committee on Armed Services.

REPORT OF COMMISSION ON APPLICATION OF FEDERAL LAWS TO GUAM

A letter from the Chairman of the Commission on the Application of Federal Laws to Guam, transmitting, pursuant to law, a report of the Commission dated August 1, 1951 (with an accompanying report); to the Committee on Interior and Insular Affairs.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the VICE PRESIDENT:

A letter from the Assistant Secretary of State, transmitting a letter from the Ambassador of the Dominican Republic, expressing sentiments of deepest regret at the flood which ravaged the region of Kansas City, Mo., (with an accompanying paper); ordered to lie on the table.

A resolution adopted by the State Convention of the California Disabled American Veterans, assembled at Santa Cruz, Calif., favoring the enactment of legislation to continue the low-rent housing program; to the Committee on Banking and Currency.

FEDERAL AID TO PUBLIC SCHOOL BUILDING CONSTRUCTION—RESOLUTION OF BOARD OF EDUCATION, SUPERIOR, WIS.

Mr. WILEY. Mr. President, I am in receipt of a letter from E. J. Norman, secretary of the Board of Education of Superior, Wis., embodying a resolution adopted by that board favoring the enactment of legislation providing Federal aid for school-building construction. I ask unanimous consent that the letter be appropriately referred and printed in the RECORD.

There being no objection, the letter was referred to the Committee on Labor and Public Welfare and ordered to be printed in the RECORD, as follows:

BOARD OF EDUCATION,
CITY OF SUPERIOR, WIS.,
July 17, 1951.

Hon. ALEXANDER WILEY,
United States Senate Office Building, Washington, D. C.

MY DEAR MR. WILEY: At a meeting of the Board of Education held on Monday, July 16, 1951, the following resolution was unanimously adopted:

"Whereas there have been bills granting aid for school-building construction for public schools and there is another being planned to be introduced in the Congress of the United States; and

"Whereas public school building construction is one of the greatest needs for the education of the present and future generation: Be it

"*Resolved*, That the Board of Education of the Public Schools of Superior, Wis., affirm its stand in support of Federal legislation for public school building construction and urge its respective Members of Congress to sponsor and promote such legislation: Be it further

"*Resolved*, That a copy of this resolution be sent to each of the respective representatives in Congress, to the Office of Education, Federal Security Agency, and to the National Education Association."

Very truly yours,

E. J. NORMAN, *Secretary.*

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. WATKINS, from the Committee on Interior and Insular Affairs:

H. R. 3795. A bill to provide for the use of the tribal funds of the Ute Indian Tribe of the Uintah and Ouray Reservation, to authorize a per capita payment out of such funds, to provide for the division of certain tribal funds with the southern Utes, and for other purposes; with amendments (Rept. No. 602).

By Mr. MCCLELLAN, from the Committee on Expenditures in the Executive Departments:

S. 921. A bill to amend section 304 of the Federal Property and Administrative Services Act of 1949 and section 4 of the Armed Services Procurement Act of 1947; without amendment (Rept. No. 603).

ENROLLED JOINT RESOLUTION SIGNED DURING ADJOURNMENT

Under authority of the order of the Senate of July 30, 1951,

The VICE PRESIDENT announced that on July 30, 1951, he signed the joint resolution (H. J. Res. 302) amending an act making temporary appropriations for the fiscal year 1952, and for other purposes, which had previouly been signed by the Speaker of the House of Representatives.

UTILIZATION OF FARM CROPS—REPORT OF A COMMITTEE (S. REPT. NO. 604)

Mr. HOLLAND. Mr. President, from the Committee on Agriculture and Forestry, I submit, pursuant to Senate Resolution 36, Eighty-first Congress, first session, and Senate Resolution 198 and Senate Resolution 361, Eighty-first Congress, second session, authorizing an investigation of the expanded uses of farm crops, the final report of the committee covering the investigation made by the so-called Gillette subcommittee.

The VICE PRESIDENT. The report will be received and printed.

BILLS INTRODUCED

Bills were introduced, read the first time and, by unanimous consent, the second time, and referred as follows:

By Mr. LEHMAN:

S. 1933. A bill to amend section 77, subsection (c), (3), of the Bankruptcy Act, as amended; to the Committee on the Judiciary.

By Mr. MCMAHON:

S. 1934. A bill for the relief of Ascanio Collodel; to the Committee on the Judiciary.

By Mr. HENNINGS:

S. 1935. A bill to provide payment for property losses resulting from the 1951 floods in the States of Kansas, Missouri, and Oklahoma, and for other purposes; to the Committee on the Judiciary.

(See the remarks of Mr. HENNINGS when he introduced the above bill, which appear under a separate heading.)

By Mr. SMITH of New Jersey:

S. 1936. A bill for the relief of Francis Castagna; to the Committee on the Judiciary.

By Mr. CHAVEZ:

S. 1937. A bill for the relief of Maximiliano Barajas; to the Committee on the Judiciary.

By Mr. MARTIN (for himself, Mr. DUFF, Mr. SMITH of New Jersey, and Mr. HENDRICKSON):

S. 1938. A bill granting the consent of Congress to a supplemental compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey concerning the Delaware River Joint Toll Bridge Commission, and for other purposes; to the Committee on Public Works.

By Mr. DWORSHAK:

S. 1939. A bill for the relief of Owen J. Gould; to the Committee on Interior and Insular Affairs.

By Mr. KERR (for himself and Mr. GEORGE):

S. 1940. A bill to provide certain educational and training benefits to veterans who served in the active military, naval, or air service on or after June 27, 1950; to the Committee on Finance.

(See the remarks of Mr. KERR when he introduced the above bill, which appear under a separate heading.)

By Mr. JOHNSON of Colorado:

S. 1941. A bill to amend section 201 of the Federal Civil Defense Act of 1950; to the Committee on Armed Services.

By Mr. WILLIAMS (for himself and Mr. FREAR):

S. 1942. A bill to authorize the charging of tolls to cover the maintenance, repair, and operation of the Delaware Memorial Bridge and it approaches after the establishment of a sinking fund for amortization of the cost of such bridge and approaches; to the Committee on Public Works.

By Mr. ELLENDER (by request):

S. 1943. A bill to amend the Federal Seed Act; to the Committee on Agriculture and Forestry.

By Mr. MORSE:

S. 1944. A bill for the establishment of a Commission on Revision of the Antitrust Laws of the United States; to the Committee on the Judiciary.

(See the remarks of Mr. MORSE when he introduced the above bill, which appear under a separate heading.)

By Mr. MCCARRAN:

S. 1945. A bill for the relief of E. S. Berney;

S. 1946. A bill for the relief of Erich Anton Helfert; and

S. 1947. A bill for the relief of Felix Kortschak; to the Committee on the Judiciary.

EDUCATIONAL AND TRAINING BENEFITS FOR CERTAIN VETERANS

Mr. KERR. Mr. President, on behalf of the Senator from Georgia [Mr. GEORGE] and myself, I introduce a bill to provide certain educational and training benefits to veterans who served in the active military, naval, or air service on or after June 27, 1950, and I request that it be referred to the Committee on Finance.

The VICE PRESIDENT. Is there objection?

Mr. WHERRY. Mr. President, I have no objection to the introduction of the bill. Why is the reference to the Finance Committee? Does the Finance Committee have jurisdiction?

Mr. KERR. The chairman of that committee and I are the authors of the bill, and we would like to have it referred to that committee, which has some jurisdiction with reference to veterans. If it is found later that the bill should be referred to another committee, there will be no argument about it.

Mr. WHERRY. I have no reason for objecting to its reference to the Committee on Finance. If it has jurisdiction, that is where the bill should go anyway. I was wondering if there was some special reason for such reference. I take the Senator's observation at its face value, and will make no objection. Certainly if the Committee on Finance has jurisdiction that is where the bill ought to go.

The VICE PRESIDENT. Did the Senator ask that the bill be referred to the Committee on Finance?

Mr. KERR. Yes.

The VICE PRESIDENT. Without objection, it will be so referred.

The bill (S. 1940) to provide certain educational and training benefits to veterans who served in the active military, naval, or air service on or after June 27, 1950, introduced by Mr. KERR on behalf of himself and Mr. GEORGE, was received, read twice by its title, and referred to the Committee on Finance.

CONVEYANCE TO KENTUCKY OF CLERK'S DESK FORMERLY IN SENATE CHAMBER

Mr. CHAVEZ. Mr. President, I submit a short resolution conveying to the Commonwealth of Kentucky the clerk's desk formerly used in the Senate Chamber. The resolution is sponsored by myself, as chairman of the Special Committee on Reconstruction of Senate Roof and Skylights and Remodeling of Senate Chamber, and on behalf of the Senator from Virginia [Mr. BYRD], the Senator from Rhode Island [Mr. GREEN], the Senator from Ohio [Mr. TAFT], the Senator from Missouri [Mr. KEM], the senior Senator from Kentucky [Mr. CLEMENTS], and the junior Senator from Kentucky [Mr. UNDERWOOD].

I ask unanimous consent for the present consideration of the resolution.

The VICE PRESIDENT. The resolution will be read for the information of the Senate.

The resolution (S. Res. 185) was read by the chief clerk (Emery L. Frazier), as follows:

Whereas the Special Committee on Reconstruction of Senate Roof and Skylight and Remodeling of Senate Chamber created under Public Law 155, Seventy-ninth Congress, have, under authority of Public Law 731, Eighty-first Congress, replaced the Senate rostrum with new desks for the President of the Senate and the Senate Clerks; and

Whereas said special committee is further authorized under said Public Law 731, Eighty-First Congress, where materials of historical interest are removed and not reused, to authorize the disposal of same in such manner as it may direct; and

Whereas the Senate, by Senate Resolution 357, Eighty-first Congress, conveyed as a gift to Vice President ALBEN W. BARKLEY, of Kentucky, the Presiding Officer's desk, occupied by him as President of the Senate and Vice President of the United States, for his lifetime, and thereafter to the Commonwealth of Kentucky; and

Whereas the desk used by the Senate clerks was a part of said rostrum, similar in architecture and design, and comparable with the Presiding Officer's desk in historical interest, and likewise should be preserved for its historical significance and associations; and

Whereas the Commonwealth of Kentucky has designated its Old Capitol Building as a proper place for the preservation and public display of articles of historical interest to Kentucky and the Nation, under custody and supervision of the Kentucky State Historical Society; and

Whereas the Senate Chamber in said Capitol Building would be an ideal place for the preservation and display of this clerks' desk, and for the additional reason that the companion desk of the Presiding Officer, now the property of Vice President ALBEN W. BARKLEY, will eventually be placed in this historic chamber, thereby keeping the old Senate rostrum intact; and

Whereas the Commonwealth of Kentucky, through its Kentucky Historical Society, would be honored to be intrusted with the preservation and public display of said desks in the Senate Chamber of its Old Capitol and preserve for posterity this historic rostrum: Therefore be it

Resolved, That the clerks' desk removed from the Senate Chamber be conveyed as a gift to the Commonwealth of Kentucky; that it shall be placed in the Senate Chamber of the Old Capitol Building in Frankfort, Kentucky; and that all historical data concerning this historic rostrum be properly displayed, including a copy of this resolution.

The VICE PRESIDENT. Is there objection to the present consideration of the resolution?

There being no objection, the resolution was considered and agreed to.

The preamble was agreed to.

PRICING PRACTICES—AMENDMENT

Mr. KEFAUVER submitted an amendment intended to be proposed by him to the bill (S. 719) to establish beyond doubt that, under the Robinson-Patman Act, it is a complete defense to a charge of price discrimination for the seller to show that its price differential has been made in good faith to meet the equally low price of a competitor, which was ordered to lie on the table and to be printed.

PRINTING OF REVIEW OF REPORT ON ATCHAFALAYA RIVER, LA. (S. DOC. NO. 53)

Mr. CHAVEZ. Mr. President, I present a letter from the Secretary of the Army, transmitting a report dated May 1, 1951, from the Chief of Engineers, United States Army, together with accompanying papers and illustrations, on a review of a report on the Atchafalaya River, La., with a view to providing an adequate navigable channel from the Mississippi River via Old and Atchafalaya Rivers to Morgan City, La., requested by a resolution of the Committee on Public Works, United States Senate, adopted on September 23, 1949, and I ask unanimous consent that it may be referred to the Committee on Public Works and printed as a Senate document, with illustrations.

The VICE PRESIDENT. Without objection, it is so ordered.

DESIGNATION OF AUGUST 1951 AS FLOOD-RELIEF MONTH—PROCLAMATION BY LIEUTENANT GOVERNOR AND ACTING GOVERNOR OF NEW YORK

Mr. IVES. Mr. President, I ask unanimous consent to have printed in the body of the RECORD a proclamation by the lieutenant governor and acting governor of the State of New York, designating the month of August 1951 as Flood-Relief Month in the State of New York, and urging the men and women of New York to cooperate with their usual wholehearted generosity to the American Red Cross.

There being no objection, the proclamation was ordered to be printed in the RECORD, as follows:

PROCLAMATION

The disastrous flood now raging in the Middle West has caused damage of appalling dimensions to a large and important section of our country. Thousands of unfortunate people are homeless. The resources of the American Red Cross are being strained to the utmost in providing relief for the people of the devastated areas. More than 42,000 persons are being fed and cared for daily.

The present measures are only temporary and a prelude to the formidable task lying ahead of the Red Cross. Many of the flood victims are without adequate resources for their own rehabilitation. It is essential to rebuild and refurnish thousands of homes, to provide medical care and to aid these people in other ways.

The American Red Cross needs $5,000,000 for the accomplishment of this humane and vital purpose. This is not a local problem, it is a job in which we all must help.

Now, therefore, I, Frank C. Moore, Lieutenant Governor and Acting Governor of the State of New York, do hereby proclaim the month of August, 1951, as Flood Relief Month, and I urge the men and women of New York to cooperate with their usual wholehearted generosity to the American Red Cross.

Given under my hand and the privy seal of the State at the capitol in the city of Albany this 25th day of July A. D. 1951.

By Lieutenant Governor and Acting Governor:

FRANK C. MOORE.

Secretary to the Governor:

JAMES C. HAGERTY.

EXECUTIVE MESSAGES REFERRED

As in executive session,

The VICE PRESIDENT laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

ADDRESSES, EDITORIALS, ARTICLES, AND SO FORTH, PRINTED IN THE APPENDIX

On request, and by unanimous consent, addresses, editorials, articles, and so forth, were ordered to be printed in the Appendix, as follows:

By Mr. FULBRIGHT:

Statement prepared by him regarding investigation of RFC loan to the American Lithofold Co.

By Mr. MARTIN:

Address delivered by him at the dedication of the Golden Slipper Square Club camp for underprivileged children at Bartonsville, Pa., July 15, 1951.

By Mr. MUNDT:

Interview regarding proposed North-South political alliance, between Senator MUNDT and the editorial staff of the United States News and World Report.

By Mr. WILEY:

Address regarding trip to Europe by members of the Senate Committee on Foreign relations, broadcast by him from Station WLS, Chicago, on July 30, 1951.

By Mr. McFARLAND:

Articles by William R. Mathews, editor and publisher of the Arizona Daily Star, from the issues of July 27 and July 28, 1951, regarding improvement in conditions in Europe as a result of United States assistance.

By Mr. CHAVEZ:

Address by W. Kingsland Macy, of New York, in regard to the release from prison of Charles Luciano, broadcast from Station WOR, New York City, July 17, 1951.

By Mr. SCHOEPPEL:

Letter from Irvin L. Cowger, department adjutant, American Legion, Topeka, Kans., in regard to the work done by the Legionnaires of Kansas during the recent flood disaster.

By Mr. GILLETTE:

Excerpts from translation of a series of three articles by Edouard Sablier, published in Le Monde, of Paris, France, July 6, 7, and 8, 1951.

By Mr. LEHMAN:

Excerpt from article entitled "How To Heckle Stalin," written by Stanley Frank, and published in the Saturday Evening Post of July 7, 1951.

By Mr. JOHNSTON of South Carolina:

Article entitled "Government Losing Reputation as Country's Ideal Employer," written by Joseph Young and published in the Washington Star of July 29, 1951.

By Mr. HOEY:

Article entitled "The Phantom American Negro," written by George S. Schuyler and published in the Freeman for April 23, 1951, with reference to the European view of the American treatment of Negroes.

Sermon on the subject A New Strategy for Peace, by Dr. John T. Wayland, pastor of the First Baptist Church of North Wilkesboro, N. C.

By Mr. MORSE:

Letter entitled "Tactics and Reasoning Questioned," from Elton Atwater, dated July 28, 1951, and addressed to the editor of the New York Times.

ASHTRAYS IN THE PRESIDENT'S PERSONAL AIRPLANE—ACCURACY OF STATEMENT OF JACK LAIT QUESTIONED

Mr. HOEY. Mr. President, I ask unanimous consent to make a brief statement.

The VICE PRESIDENT. Without objection, the Senator from North Carolina may proceed.

Mr. HOEY. Mr. President, I know there is a great deal of extravagance in the Government, and that much money is being wasted in various departments, but I think it unfortunate, sometimes, that reckless statements are made in the public press or over the radio about extravagances in expenditures for particular items, particularly statements which are so fantastic as one which appeared recently to which I wish to call attention.

Walter Winchell writes a syndicated column for the newspapers. He is on vacation, and during this time Jack Lait is supplying and filling Mr. Winchell's column. On Saturday, July 21, the following statement appeared in this column:

The ashtray, hand made to fit on the arm of President Truman's seat in his personal plane, cost $18,000—says the man who made it.

That statement, which appeared in this syndicated column, as I say, on Saturday, July 21, was so fantastic that I had a member of my staff on the investigating committee look into it, to see what the facts were. He has now reported to me as follows:

With reference to the attached statement by newspaper columnist, Jack Lait, I personally inspected the President's personal airplane, the *Independence* on this date at National Airport.

That was July 28, 1951.

I found:

1. There is no ashtray in the arm of the seat the President occupies in the plane.
2. There is an ashtray in each corner of the work table in the President's compartment of the plane. I would estimate that each cost about $1.
3. There is a standard airline-type ashtray in the arm of each of the seats in the main passenger compartment of the plane.
4. There is a standard airline-type ashtray in the pilots' compartment of the airplane.
5. There are no other ashtrays in the airplane.

P. S.—The President does not smoke.

Here is an instance of a columnist stating that the ashtray used by the President on his plane cost $18,000. To begin with, according to the statement of the investigator, of the few ashtrays which were in the plane, none cost more than $1. I cannot understand why reckless statements of this sort are made, but so many people have heard so many statements about extravagance in the Government that they accept every statement as being true. Here is a statement conveying to the public the idea that $18,000 was spent for an insignificant thing such as an ashtray. Everyone, including the man who wrote it, should realize that the statement could not be true. The investigation shows that the ashtrays cost about $1 apiece, and that there was no extravagance, in any way, in connection with their purchase.

I felt that the statement referred to should be corrected, since it was such an outstanding misrepresentation of facts.

SITUATION WITH RESPECT TO NARCOTICS

Mr. HUMPHREY. Mr. President, I ask unanimous consent to have a statement printed in the body of the RECORD. The statement deals with the problem of narcotic addiction and the improvement in enforcement on the part of Federal, State, and local governments. I know the Senator from Maryland [Mr. O'CONOR] has given leadership with respect to this particular problem, and I think he will be interested in reading the text of the statement and will appreciate the research which has gone into its preparation.

Mr. WHERRY. Mr. President, does the Senator from Minnesota ask that the statement be printed in the body of the RECORD?

Mr. HUMPHREY. Yes.

Mr. WHERRY. I think it is very important. I am not objecting. Will the Senator state the length of the statement?

Mr. HUMPHREY. It is approximately eight pages, double space, and contains about six pages of tables.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR HUMPHREY

The drive for economy in the Congress is commendable and has the support of the American people. It is essential, however, that we distinguish between effective, wholesome economy and a false economy which is short-sighted in its implications and unhealthy in its effect on the American society. In connection with the appropriation for the Treasury Department that the Congress be wary lest its drive for economy seriously endanger the health and welfare of our people and, particularly, the lives of our children. The Treasury Department has the responsibility through its Bureau of Narcotics to protect the American people from a very serious physical and emotional plague.

In recent months the American people have had it made vividly clear to them that the use of narcotics, particularly by children, is spreading and is creating a cancer within every community. These vegetable substances, derivative or synthetic, which when taken in moderate amounts tend to soothe and stimulate the senses, in fact cause stupor and convulsions and distress to many thousands. When taken repeatedly they form a habit that can only be stopped at the cost of intense physical and psychological distress. This addiction leads its victims to lose the power of self-control.

Recent statistics indicate serious increases in the number of admissions to narcotics hospitals in spite of the fact that we were making real progress up until recently. The total number of narcotic drug addicts in the United States declined from 150,000 to 200,000 in 1914 to 48,000 in 1948. Yet, as the distinguished chairman of the Special Senate Committee To Investigate Organized Crime in Interstate Commerce, the Senior Senator from Maryland, Mr. O'CONOR, has reported, the number of users of narcotics under the age of 21 has increased 600 percent during the past several years. The New York Times of June 19, 1951, stated that the use of narcotics has attained epidemic proportions in nine major cities, Philadelphia, Detroit, Chicago, St. Louis, Washington, Baltimore, New Orleans, San Francisco, and New York.

The United States Public Health Service recently reported that at its narcotics hospital in Lexington, Ky., admissions increased from 52 in 1948 to a peak of 440 teen-agers in 1950. According to the district attorney's office in the city of New York, street sales of narcotics in that city alone amount to more than $1,000,000 annually. Arrests in that city for illegal use of the drugs have increased from 712 in 1946 to 2,482 in 1950. In 1946 6 teen-agers were charged with the possession of narcotics as compared to 65 in 1950 and as compared to 59 as of April of this year.

I asked unanimous consent that a table stating the extent of the violations reported for the calendar year 1951 be printed as appendix 1 and that a chart on the same subject from the Annual Report of the Treasury Department for 1950 be printed as appendix 2.

What can our Government do about this scourge? We have many statutes on the books dealing with the subject. These include: The Vehicle Forfeiture Law, as amended August 9, 1950 (49 U. S. C. 781 et seq.); the Harrison Narcotic Act of 1914; the Marijuana Tax Act of 1937; the Interstate Commerce Act, which prevents interstate transportation of drugs that are unauthorized; the Opium Poppy Control Act of 1942,

These laws are insufficient, however, unless they are properly enforced.

The Bureau of Narcotics in the Treasury Department is charged with the investigation, the detection, and the prevention of violations of the Federal statutes dealing with narcotics. The shocking fact, Mr. President, is that the history of the appropriations for this Bureau shows a steady decline in our appropriations for its operation and in the total number of its agents, even though the menace which it has the responsibility to combat keeps increasing.

I ask unanimous consent to have a table showing the appropriations for the total number of agents of the Bureau of Narcotics from the fiscal year 1930 to date incorporated as appendix 3. That table will reveal that whereas in 1930 the Bureau had a total of 281 agents it now has a total of 188 agents. I am informed by the Bureau that the number of agents now employed is totally inadequate to cope with the problem of narcotic control effectively.

I ask unanimous consent that there be included as appendix 4 a table showing the number of agents of the Bureau and their location. I bring to the attention of the Senate the fact that there are only three agents in my city of Minneapolis and that there is only one agent in the city of Omaha, Nebr., so that for the whole Twelfth District, in which my State is represented, there are a total of only four agents. It is the duty of the men in this district to cover not only their respective States but also the surrounding States in our region. The difficulty of adequate enforcement is thus quite apparent to the naked eye.

The Customs Bureau in the Treasury Department also has a major responsibility for narcotics control. It is this Bureau which has charge of the ports and borders of our country and which must prevent the entry of narcotics into the United States. Let us look for a moment at the status and operation of that agency.

There are three branches of the Customs Bureau dealing with this question. There are today approximately 825 port patrol officers who search, guard, and patrol vessels and piers; 2,600 customs inspectors who receive and release freight, imported merchandise, and examine luggage and vehicles; and 189 investigative officers who attempt to track down violators of the laws. This staff has a very difficult task because the capture of smugglers is difficult. Heroin and cocaine are usually smuggled in small amounts of about two pounds and are carried on the person of the smuggler. In order to find the cache the Inspector must practically disrobe the smuggler. Since it is impossible to force all persons entering this country to disrobe, the task of preventing smuggling becomes difficult. The smuggling of marijuana occurs mostly between Brownsville, Tex., and El Paso, Tex., where it is carried over the border in sacks which weigh about 150 pounds. Our Government does not have a sufficient number of enforcement officers to adequately patrol that area. Within the past year, therefore, there were only 210 seizures of narcotics by the Customs Bureau. Furthermore, as compared with 1,735 ounces of raw opium seized in 1949, only 645 ounces where seized in 1950. I ask unanimous consent that a chart showing these seizures in detail, from a Treasury Department report of June 30, 1950, be printed as appendix 5 and that another chart showing seizures of prepared opium from 1932 to 1950 be printed as appendix 6. The comparative decline in seizures for 1950, Mr. President, is most disturbing and should call for immediate action by the Congress and the executive agencies.

WHAT CAN WE DO ABOUT NARCOTICS?

Many proposals have been made to deal with this most serious menace to our civilization. The Commission on Narcotic Drugs of the United Nations Economic and Social Council has considered the draft of an agreement to limit the production of opium to the world's medical and scientific needs. The principal sources of raw opium today are Iran, Thailand, Turkey, China, Mexico, and India. Italy and Turkey have become the principal sources of illicit heroin for many parts of the world. Cocaine is made from the leaves of the South American coca plant. A tentative agreement with regard to opium control has already been reached between Turkey, Yugoslavia, Iran, and India. It is most crucial that we develop a United Nations distributing agency for narcotic drugs to which all the producing countries will sell their entire supply and that this agency in turn regulate by international agreement the distribution of those narcotics.

A number of legislative proposals have also been made here in the Congress. I am proud to be the sponsor of a bill, S. 1186, which will make significant strides toward regulating the use of habit-forming drugs in the United States. The distinguished junior Senator from Tennessee, Mr. KEFAUVER, has likewise introduced a bill to tighten the penalty for the illegal sale of narcotics.

Narcotics legislation has been enacted by most States in the Union. The Uniform Narcotic Drug Act and other adequate legislation has been enacted by all States except Kansas, Massachusetts, New Hampshire, and Washington.

There is no substitute for effective local law-enforcement action. The Federal Government alone cannot do the job. Local communities must be alerted to the danger and to their responsibilities. Local legislatures must act. Local police officials must be prepared to meet the criminal acts. My own State of Minnesota in recent years and my own city of Minneapolis have attempted to meet their local enforcement responsibilities. A 1950 survey in our State showed that 118 persons were considered to be drug addicts compared to 264 in a comparable survey conducted in 1938. This is still serious in that it makes the addict total for our State one for every 25,000 of our population. This is believed to be a great deal lighter than in many States, but is still much too high a ratio. The number of 118 in our State, with a population of 3,000,000, when compared to the number of 500 to 600 addicts residing in the District of Columbia, with a population of 1,500,000, points up the fact that vigorous local law enforcement does have an effect.

A vigorous educational program is likewise needed in our schools. Many States do have educational programs depicting the evils of narcotics. The city of New York is now engaging in such an undertaking. We need more effective, direct, and imaginative action on the Federal level.

The United States Office of Education together with the National Institute of Mental Health and other interested parties has recently met to deal with the problem of what we can do in the field of education to combat the narcotic menace. Meetings, however, are not enough. There is no excuse in saying that the problem is primarily a health problem and does not relate to education. The problem of narcotics must be met at all levels of government, and it must be met by every educational technique at our command.

APPENDIX 1

Violations reported, calendar year 1950

State	Narcotics	Marijuana
Alabama	31	9
Alaska	3	6
Arizona	35	34
Arkansas	24	4
California	390	108
Colorado	21	90
Connecticut	18	7
Delaware	17	
District of Columbia	10	
Florida	31	14
Georgia	21	5
Hawaii	14	7
Idaho		2
Illinois	330	101
Indiana	39	7
Iowa	7	7
Kansas	6	3
Kentucky [1]	1,059	23
Louisiana	132	98
Maine	11	
Maryland	87	37
Massachusetts	70	10
Michigan	107	33
Minnesota	22	13
Mississippi	23	1
Missouri	79	32
Montana	13	1
Nebraska	7	10
Nevada	43	3
New Hampshire	1	
New Jersey	242	60
New Mexico	3	28
New York	572	85
North Carolina	46	6
North Dakota		
Ohio	208	79
Oklahoma	130	31
Oregon	23	1
Pennsylvania	134	49
Rhode Island	7	8
South Carolina	16	4
South Dakota		
Tennessee	32	9
Texas	246	423
Utah	33	9
Vermont	4	
Virginia	12	6
Washington	86	22
West Virginia	22	
Wisconsin	24	3
Wyoming	3	2
Total	4,494	1,490

[1] Includes many addicts from other States arrested by agents for violation of a Kentucky addict law.

APPENDIX 2

Number of violations of the narcotic and marijuana laws reported during the fiscal year 1951, with their dispositions and the penalties

	Narcotic laws				Marijuana law	
	Registered persons		Nonregistered persons		Nonregistered persons	
	Federal court	State court	Federal court	State court	Federal court	State court
Pending July 1, 1949	419		1,307		481	
Reported during 1950:						
Federal [1]	290		2,724		640	
Joint [1]	18		1,379		1,112	
Total to be disposed of	727		5,410		2,233	
Convicted:						
Federal	45	12	963	1,216	383	105
Joint	5	7	435	564	483	312
Acquitted:						
Federal	4		24	55	17	12
Joint	1		8	31	23	10
Dropped:						
Federal	321	6	375	101	108	21
Joint	15	2	119	102	144	51

[1] Federal cases are made by Federal officers working independently while joint cases are made by Federal and State officers working in cooperation.

APPENDIX 2—Continued

Number of violations of the narcotic and marijuana laws reported during the fiscal year 1951, with their dispositions and the penalties—Continued

	Narcotic laws				Marijuana law	
	Registered persons		Nonregistered persons		Nonregistered persons	
	Federal court	State court	Federal court	State court	Federal court	State court
Compromised:[2]						
Federal	68		1			
Joint						
Total disposed of	486		3,994		1,669	
Pending June 30, 1950	241		1,416		564	
Sentences imposed:	Yrs. Mos.	Yrs. Mos.	Yrs. Mos.	Yrs. Mos.	Yrs. Mos.	Yrs. Mos.
Federal	98 3	11 6	1,913 10	1,024 4	593 11	75 3
Joint	13 --	9 2	884 4	461 3	646 --	277 1
Total	111 3	20 8	2,798 2	1,485 7	1,239 11	352 4
Fines imposed:						
Federal	$26,552		$72,889	$7,092	$11,125	$928
Joint		$3,250	18,792	16,569	5,468	5,449
Total	26,552	3,250	91,681	23,661	16,593	6,377

[2] Represents 69 cases which were compromised in the sum of $12,020.

APPENDIX 3

Treasury Department, Bureau of Narcotics—Statement of appropriations and personnel

Fiscal year	Appropriation	Total number agents
1930	$1,611,260	281
1931	1,712,998	271
1932	1,708,528	272
1933	1,525,000	260
1934	[1] 1,400,000	253
1935	1,244,899	264
1936	1,249,470	256
1937	1,275,000	237
1938	1,267,600	231
1939	1,267,600	231
1940	1,306,700	232
1941	1,308,869	235
1942	1,278,475	227
1943	1,315,560	207
1944	1,327,000	189
1945	1,338,467	191
1946	1,397,000	190
1947	1,300,000	180
1948	1,430,000	175
1949	1,542,270	185
1950	1,647,000	177
1951	1,850,000	188
1952 (budget request)	[2] 2,100,000	218

[1] $400,000 reserve made by Bureau of the Budget.
[2] Approved by House $2,025,000.

APPENDIX 4

Headquarters and branch offices, Bureau of Narcotics (Feb. 1, 1951)

District	Agents	Address	Telephone
1. Boston 9, Mass	6	1120 Post Office Bldg., P. O. Box 2138 (Zone 6)	Liberty 2-5600, extensions 370-1-2 (direct line, Liberty 2-3938).
New Haven, Conn	1	163-M Federal Bldg. (box 1, zone 1)	Spruce 6-0155.
2. New York 7, N. Y	45	Suite 605, 90 Church St	Rector 2-9100, extensions 8180-8181 (direct line, Rector 2-9380). Teletypewriter NY-1-2398.
Buffalo 3, N. Y	1	401½ Post Office Bldg	Washington 4829.
Newark 2, N. J	2	858 Industrial Office Bldg	Market 3-5295.
3. Philadelphia 6, Pa	4	605 U. S. Customhouse	Market 7-6000, extension 300 (direct line, Market 7-4298).
Pittsburgh 19, Pa	2	519 New Post Office and Courthouse Bldg., P. O. Box 1614 (zone 30).	Grant 1-0800, extension 648.
5. Baltimore 2, Md	4	314 Post Office Bldg	Mulberry 8320, extension 228 (direct line, Plaza 1725).
Washington 25, D. C	4	Room 8218, 1300 E St. NW	Executive 6400, extension 788.
Charlotte, N. C	1	231 Post Office Bldg. (box 1866)	6-1876.
Greensboro, N. C	2	419 Post Office Bldg. (box 16)	2-0455.
Roanoke, Va	1	304 Post Office Bldg. (box 2297)	2-4185.
Charleston, W. Va	1	218 U. S. Courthouse (box 1981)	68-4722.
6. Atlanta 3, Ga	3	613 Atlanta Journal Bldg	Main 4252-4253.
Augusta, Ga	1	207 Post Office Bldg. (box 447)	2-5722.
Jacksonville 1, Fla	1	423 Post Office Bldg. (box 4995)	4-7111, station 199.
Miami 7, Fla	1	319 Post Office Bldg. (box 1148)	9-5431, extension 68.
Birmingham 1, Ala	1	44 Post Office Bldg. (box 2137)	3-7041.
7. Louisville 1, Ky	3	418 Federal Bldg., P. O. Box 537	Jackson 1361, extensions 390 and 391 (night, Jackson 1745).
Lexington 81, Ky	2	335 Post Office Bldg. (box 60)	3-2272.
Knoxville 9, Tenn	1	325 Post Office Bldg. (box 1506)	3-3621.
Nashville 2, Tenn	0	331 Federal Bldg. (box 1189)	6-5345.
Memphis 1, Tenn	1	336 Post Office Bldg. (box 617)	8-0813.
8. Detroit 26, Mich	8	802 Federal Bldg	Woodward 3-9330, extensions 311-2-3 (night, Woodward 3-9344) (direct line, Woodward 1-6549).
Cincinnati 1, Ohio	2	206 Federal Bldg. (box 865)	Cherry 5820, extension 325.
Cleveland 13, Ohio	2	502 Federal Bldg	Main 1-4140 (night, Main 1-4147).
Columbus 15, Ohio	1	239 Federal Bldg	Main 6411, extension 249.
Toledo 4, Ohio	1	304 U. S. Court and Customhouse	Adams 3711.
9. Chicago 7, Ill	16	817 U. S. Post Office Bldg	Wabash 2-9207, extensions 191 and 192 (direct line, Harrison 7-9523). Teletypewriter CG-820.
Springfield, Ill	1	392 Federal Bldg (box 1035)	4671, extension 41.
Indianapolis, Ind	1	214 Federal Bldg (box 413)	Market 1561, extension 249.
Madison, Wis	1	203 Federal Bldg (box 63)	7-2041.
10. Houston 14, Tex	7	714 Federal Office Bldg. (box 4150)	Capitol 9632-9633. Teletypewriter HO-555.
Dallas 1, Tex	2	1604 Santa Fe Bldg. (box 1715)	Riverside 6951, extensions 525-526.
El Paso, Tex	0	205 U. S. Courthouse Bldg. (box 658)	3-7922.
Fort Worth 2, Tex	1	10 U. S. Courthouse Bldg	Edison 5361, extension 342.
San Antonio 6, Tex	3	413 Post Office Bldg. (box 2727)	Fannin 7141, extension 269.
Jackson 114, Miss	1	306 Post Office Bldg. (box 1745)	4-4187.
New Orleans 4, La	4	520 Federal Office Bldg. (box 1192)	Magnolia 5271, extensions 368-369.
11. Kansas City 6, Mo	5	743 U. S. Courthouse	Victor 0564 and 3755, extension 320.
St. Louis 1, Mo	2	643 U. S. Court and Customhouse Bldg	Main 8100, extension 295 (night, Main 8143).
Oklahoma City, Okla	1	401 Post Office Bldg. (box 946)	2-8733.
Tulsa, Okla	2	246 Post Office Bldg. (box 623)	4-5062.
Little Rock, Ark	1	501 Federal Bldg. (box 565)	2-4361.
12. Minneapolis 1, Minn	3	204 U. S. Courthouse	Main 3244, extension 252 (direct line, Atlantic 4661).
Omaha 2, Nebr	1	414 Post Office Bldg	Atlantic 8212, extension 59.
13. Denver 2, Colo	4	100 U. S. Customhouse, post office box 1588, zone 1	Keystone 4151, extension 463.
Salt Lake City 1, Utah	1	443 Post Office Bldg. (box 804, zone 10)	4-2552, extension 396.
Albuquerque, N. Mex	1	313-C Federal Office Bldg. (box 93)	6741, extension 138.
14. San Francisco 2, Calif	11	Room 2104, 100 McAllister St	Hemlock 1-3975 and 1-3976 (direct line, Hemlock 1-6942). Teletypewriter SF-563.
Los Angeles 12, Calif	3	841 Federal Bldg	Madison 7411, extensions 496 and 498 (direct line, Madison 8329).
Sacramento 6, Calif	1	479 New Post Office Bldg. (box 1641)	Gilbert 3-6051.
Phoenix, Ariz	2	211 New Post Office Bldg (box 146)	3-1203.
Tucson, Ariz	0	318 Federal Bldg (box 1369)	3-1271.
Fresno, Calif	3	205-B Post Office and Courthouse	
15. Seattle 4, Wash	4	311 U. S. Courthouse	Seneca 3100, extensions 606 and 607.
Portland 5, Oreg	1	230 U. S. Courthouse (box 1008)	Atwater 6171.
16. Honolulu 1, T. H	1	575 Alexander Young Bldg., Post Office Box 3285	5-8078.
Special Field Force, Washington, D. C	3		

APPENDIX 5

Seizures for violations of customs laws, fiscal years 1949 and 1950

Seizures	1949	1950	Percentage increase, or decrease (−)
Automobiles and trucks:			
Number [1]	441	446	1.1
Value	$518,460	$398,910	−23.1
Aircraft:			
Number [1]	8	5	−37.5
Value	$206,800	$13,400	−93.5
Boats:			
Number [1]	39	44	12.8
Value	$1,702,984	$2,822,643	65.7
Narcotics:			
Number	1,269	1,059	−16.5
Value	$304,686	$264,841	−13.1
Liquors:			
Number	4,901	5,385	9.9
Gallons	32,046	33,959	6.0
Value	$369,125	$382,809	3.7
Prohibited articles (obscene, lottery, etc.):			
Number	2,138	1,787	−16.4
Value	$34,783	$13,430	−61.4
Other seizures:			
Number	10,923	7,553	−30.9
Value:			
Cameras	$7,769	$32,317	316.0
Edibles and farm products	339,740	29,133	−91.4
Furs—skins and manufactured	112,606	12,409	−89.0
Guns and ammunition	20,394	11,222	−45.0
Jewelry, including gems	504,678	190,057	−62.3
Livestock	25,705	10,562	−58.9
Tobacco and manufactures of	31,785	8,578	−73.0
Watches and parts	26,344	279,959	962.7
Wearing apparel	63,085	44,393	−29.6
Miscellaneous	1,403,515	844,514	−39.8
Total value of other seizures	2,535,621	1,463,145	−42.3
Grand total:			
Number [1]	19,231	15,784	−17.9
Value	$5,672,459	$5,359,178	−5.5

[1] Total number of seizures does not include number of automobiles, trucks, aircraft, and boats seized, since these are frequently seized in connection with seizures of liquor, narcotics, etc.

APPENDIX 6

Seizures of prepared opium from 1932 through 1950

Year	Ounces	Grains	Kilograms	Grams
1932	5,220	289	148	6
1933	11,982	31	339	689
1934	6,085	410	172	537
1935	12,485	245	353	968
1936	7,807	347	221	347
1937	12,150	58	344	205
1938	21,270	144	602	982
1939	4,113	92	116	610
1940	1,024	164	29	41
1941	1,813	57	51	401
1942	1,851	161	52	486
1943	2,569	138	72	840
1944	2,505	17	71	13
1945	3,569	322	101	202
1946	3,278	79	92	917
1947	2,984	283	84	615
1948	1,211	69	34	336
1949	1,532	54	43	436
1950	778	60	22	61

The conclusions I draw from the study I have made of narcotics and from my own experience with the problem as the mayor of a large city is that our Government cannot evade its responsibility to act. We need more than speeches, more than meetings, and more than congressional investigations. If we are sincere in our efforts, we must provide our law-enforcement agencies with the tools necessary to meet the narcotic menace. I am not prepared to say finally, Mr. President, whether the Bureau of Narcotics or the Federal Bureau of Investigation is the better bureau in the field of law enforcement. It is my feeling that the Federal Bureau of Investigation should take over the narcotic enforcement field so as to coordinate and fully utilize the excellent techniques which the FBI has developed in the field of law enforcement. I mean no reflection on the Bureau of Narcotics when I express this belief. But, whether it is the Bureau of Narcotics or the Federal Bureau of Investigation or the Customs Service, the Congress must appropriate funds so that the appropriate Government agency can have the personnel and the resources to act and protect our Nation and our children.

The reduction of expenditures in this area is not only false economy but dangerous. I am disappointed that the Bureau of the Budget has not seen fit to submit a program called for by the nature of the problem. As Members of Congress responsible to our constituencies, we dare not and should not and must not relax our energies or blind ourselves to the task ahead.

FLOOD CLAIMS ACT OF 1951

Mr. HENNINGS. Mr. President, earlier this week my good friend and distinguished colleague, the chairman of the Senate Public Works Committee [Mr. CHAVEZ], reported to the Senate on the conditions we found in our inspection trip into the flood area in Missouri, Kansas, and Oklahoma. His report was so comprehensive, so accurate, and so eloquent that there is certainly no need for me to repeat nor to amplify the stark facts which he has so well presented.

It was an appalling and terrible sight. And the group of Senators who went to the scene of the floods to get a first-hand picture of the devastation, mind you, Mr. President, were merely spectators. We had not lived through days and nights of apprehension and dread and numbness and shock. We had not lost every earthly possession, seen our homes swept away, our families separated, all our wordly belongings demolished, the fruits of long years of toil and frugality ruined, our hopes and dreams of security shattered. We were spectators. We saw the desperate efforts of the people in the area to sandbag and hold back the rushing waters; we walked through the debris; we saw the destruction, mile upon mile and acre upon acre of it; we smelled the stench, which was horrible; and we talked to the people; but there was no possible way for us to transplant ourselves into the position of those people. We could understand, we could sympathize deeply and sincerely, we could vow never to let it happen again. But we simply could not grasp or share the true feelings of those people because we had not lived through the horrors of the flood and we had not experienced the psychological impact of utter helplessness and hopelessness and complete loss.

All the Senators who saw the havoc and desolation of the area were, I am sure, convinced that we must do everything humanly possible to prevent such a catastrophe from ever occurring again and that we must meet the immediate needs in terms of emergency relief and shelter and extend every possible help for rehabilitation.

Mr. MAYBANK. Mr. President, will the Senator yield?

Mr. HENNINGS. I am glad to yield to my distinguished friend from South Carolina.

Mr. MAYBANK. The Committee on Banking and Currency held a meeting several days ago at which time the committee discussed FHA matters and other matters pertaining to the bill in which the Senator from Missouri [Mr. HENNINGS] and the Senator from Kansas [Mr. SCHOEPPEL] and other Senators are interested. At that meeting a full discussion of the entire subject matter was had. I wish to congratulate the Senator from Missouri for bringing up the subject of providing relief in the flood disaster area at this time. As I said, the committee discussed FHA matters and other matters pertaining to legislation needed in connection with the flood disaster in Kansas, Missouri, and other States. The committee was of the unanimous opinion that action should be taken immediately.

I do not see any necessity for having any hearings on the House Joint Resolution 303, which has come over from the House today. That is a measure to provide housing relief in the Missouri-Kansas-Oklahoma flood relief disaster emergency. Since the members of the committee have already discussed the subject informally, hearings are not necessary, in my opinion.

Mr. HENNINGS. Mr. President, I thank the distinguished chairman of the Committee on Banking and Currency for the cooperaiton of himself and the members of his committee in connection with the furnishing of relief to the people in the flooded area. I see the distinguished Senator from Kansas [Mr. SCHOEPPEL] has risen. I hope he will permit me to complete my statement, which relates to another bill.

Mr. SCHOEPPEL. Mr. President, the measure referred to by the distinguished chairman of the Committee on Banking and Currency, House Joint Resolution 303, deals with the type of legislation which is much needed. It covers the emergency phase of the situation. It is a measure which should be enacted into law quickly, because the housing situation in the flooded area is acute, and the joint resolution, in my humble opinion seems to provide the most practical way to handle the emergency expeditiously. I am indeed hopeful that the joint resolution will be promptly passed.

Mr. HENNINGS. I thank my distinguished friend from Kansas for his constructive suggestions and his remarks upon the condition with which he is well familiar, which means so very much to the people of his great State.

Mr. President, I should like to complete the statement which I undertook to make when the distinguished chairman of the Committee on Banking and Currency interrogated me in the belief that I was speaking on the joint resolution. I am speaking about a new bill which I am introducing and asking to have appropriately referred. It is a measure which has to do with disaster relief and deals with the entire emergency in distressed areas.

The swiftness with which the Congress met the appeal for emergency relief and passed the $25,000,000 disaster appropriation was an inspiring demonstration of the sympathy and humaneness and generosity with which the American people

always respond in times of crisis and distress. These funds were used to meet the first critical needs for food and clothing and shelter and medical assistance and to restore transportation and communications.

To implement the rehabilitation, I introduced Senate Joint Resolution 87 in the Senate on Monday and Representative BOLLING introduced a companion measure in the House to provide temporary housing for families who were made homeless by the flood. The measure also amends section 8 of the National Housing Act to permit FHA-guaranteed loans of 100 percent within certain maximum dollar limitations so that families whose homes and property were destroyed by this disaster can undertake the building of new homes. The joint resolution passed the House unanimously, I understand, yesterday, and I hope that we may have a unanimous agreement to take it up in the Senate today.

This measure and the emergency appropriation represent immediate and urgent steps to relieve human suffering. This is not the complete answer, however. We are confronted with a situation which has paralyzed a large section of our country. Not only the day-to-day routine of living but business and industry and agriculture have been so immobilized as to constitute a serious threat to the economy of that entire area. The impact is now being felt, and will continue to be felt, by the entire Nation for some time to come in terms of the loss of productive capacity, particularly on defense contracts, the ruin of crops, the destruction of livestock, the disruption and delay in transporting vital materials.

Because of the failure of the Government to control the waters, we are now faced with a serious problem. Not only must we meet the needs of the people of the area with humane measures, as we are now doing, but we must also recognize the value of these people as citizens and as producers and work to relieve the economic dislocation which has resulted. The estimated figure of more than a billion dollars in losses includes only physical loss or damage. It does not take into account loss of production or of business, or sales volume or wages, all directly attributable to the flood.

Mr. President, I believe in and support wholeheartedly the programs for economic and military aid for our friends and allies abroad. I also believe we have a responsibility to rehabilitate Americans. This is particularly true when we realize that these Americans are in this unfortunate position through no fault of their own. They could not have bought insurance to protect themselves against flood damage even if they wanted to, because insurance companies either will not write this kind of insurance for property directly in the area so susceptible to repeated floods or could do so only at exorbitant cost.

In recognition of these factors, I am introducing a bill under the title of the Flood Claims Act of 1951. The purpose of this measure is to provide indemnity for property losses resulting from the 1951 floods in the States of Missouri, Kansas, and Oklahoma. The bill, I believe, represents a new concept in meeting disaster in this country, but is patterned after the method used in the Philippine Rehabilitation Act creating a War Damage Commission which was authorized to make compensation for physical loss or damage to certain kinds of public and private property occurring in the Philippines as a result of World War II.

Under this legislation, a Flood Claims Commission composed of five members would be appointed by the President with the advice and consent of the Senate. The Commission would be directed to survey and determine the extent, location, and character of damage to property in the flood area and, based on its findings, set up a system for filing and adjudication and payment of claims. Claims would be discounted in accordance with a formula set forth in the bill.

In addition, the measure authorizes Federal grants for repair or rebuilding of public property damaged by the flood on the basis of 50-percent contribution by the Federal Government. Where a State or local government could not match a Federal grant for this purpose, it would, under this measure, be eligible for a loan from the Government with which to match the Federal contribution. This Federal assistance is particularly important, for example, to airports, where runways and other facilities have suffered substantial damage.

Provision for emergency aid and rehabilitation measures, while basic and indispensable, in no way absolve the Federal Government of its responsibility to provide the necessary protection by means of an integrated, comprehensive water program that takes into account the total needs of the area. While the Federal Government and the States have been dragging their heels on such a program year after year, the cumulative loss over these years has reached a figure of staggering proportions. In the final analysis, physical damage possibly can be repaired, although at terrific expense, but the loss of hundreds of thousands of man-hours and farm and factory output can never be made up.

The need for economic rehabilitation in the flood area is so important because the capability and capacity of that large section of the country form an essential cog in our over-all economic and productive machine. In order for this machine to function smoothly and at peak efficiency, this vital cog must be brought back into proper balance and alinement. We cannot afford further disruption and dislocation in our defense effort. The indemnity measure which I am today introducing is designed not only to meet our responsibilities to the citizens of the stricken area, but to further insure the maximum output of that area to help meet our economic and military needs.

There being no objection, the bill (S. 1935) to provide payment for property losses resulting from the 1951 floods in the States of Kansas, Missouri and Oklahoma, and for other purposes, introduced by Mr. HENNINGS, was received, read twice by its title, and referred to the Committee on the Judiciary.

Mr. HENNINGS. Mr. President, I ask unanimous consent to insert in the RECORD a more detailed explanation of the provisions of this bill.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

EXPLANATION OF FLOOD CLAIMS ACT OF 1951

Under this legislation there would be established within the executive branch of the Government a Flood Claims Commission of five members, appointed by the President with the advice and consent of the Senate. Two members of the Commission would be residents of the flood area. It would be the duty of the Commission, immediately upon its organization, to survey and determine the extent, location, and character of damage to property in the flood area and thereafter, on the basis of its findings, to establish a system for the receipt and adjudication of claims for flood losses to property which would be paid by the United States.

In recognition of the fact that the flood represents a national economic disaster for which the Federal Government should assume some responsibility for restoration of property losses, the bill provides a formula for Federal grants which has as its chief purpose, recompense to those who are least able to recoup their losses without assistance from the Federal Government. Under this formula there would first be deducted from any claim the sum of $100. This limitation has been incorporated in order to prevent the filing of large numbers of frivolous claims. Thereafter, the claims would be discounted on the basis of 25 percent for the first $10,000, 50 percent for the next $90,000, and 75 percent of the remainder up to a statutory limitation of $1,000,000 on all claims for any one claimant. The formula will also provide for the further reduction from approved claims of the value of prior rehabilitation not paid for by the claimant and the amount of any insurance or other indemnity collected or collectible for such losses.

In addition, the measure also provides for vesting in the President, subject to delegation by him to appropriate agencies, authorization for Federal grants for the replacement, repair or rebuilding of public property damaged by the flood. These payments will be on the basis of 50-percent contribution by the Federal Government and would be subject to the usual determinations concerning the fiscal resources of the State or local government entity involved.

Finally, the bill would provide that in the event any State or local government could not match any Federal grant, it would be eligible to obtain a loan from the Federal Government with which to match the Federal contribution. These loans would be repayable over a period of 20 years at the going rate of interest for United States obligations of comparable term plus one-half percent.

The bill also contains the customary administrative provisions with respect to the conduct of the business of the Commission and the programs authorized to be carried on by the President; defines the classes of persons qualified to be reimbursed for their losses; enumerates certain classes of property for which no repayment on account of loss or damage would be made, such, for example, as accounts receivable, records, bank deposits, securities, and the like. Criminal provisions are included, both to protect claimants and the United States.

The life of the Commission has been set at 2 years.

HOUSING RELIEF IN THE MISSOURI-KANSAS-OKLAHOMA FLOOD DISASTER EMERGENCY

Mr. HENNINGS. Mr. President, I ask that House Joint Resolution 303 be laid before the Senate.

The VICE PRESIDENT laid before the Senate the joint resolution (H. J. Res.

303) to provide housing relief in the Missouri-Kansas-Oklahoma flood disaster emergency, which was read twice by its title.

Mr. HENNINGS. Mr. President, I ask unanimous consent for the present consideration of House Joint Resolution 303.

The VICE PRESIDENT. Is there objection?

Mr. WHERRY. Mr. President, as I understand, this is not the measure to which the distinguished Senator from Missouri previously referred. This is a joint resolution which has been passed by the House.

Mr. HENNINGS. The Senator from Nebraska is correct.

Mr. WHERRY. And it is now before the Senate with a request for its consideration. I should like to ask a question of the Senator from Kansas. Does the joint resolution apply strictly to housing in the disaster area?

Mr. SCHOEPPEL. That is exactly the situation. It covers the emergency needs. It has to do with FHA housing and temporary housing.

Mr. WHERRY. I understand that. I was told last Thursday or Friday that a measure might come from the House which had to do with other provisions in the public housing bill, on which all could agree. I was wondering when that measure might come before the Senate.

Mr. MAYBANK. Mr. President, will the Senator yield?

Mr. HENNINGS. I am very glad to yield to the Senator from South Carolina.

Mr. MAYBANK. I have spoken to Representative SPENCE twice in the past 2 days. The members of the House committee are working diligently. Mr. SPENCE thought the defense-housing bill would be reported this week. That is the bill which contains the Wherry amendment, provision for veterans' housing, and provision with respect to FHA insured housing to which the Senator has reference.

Mr. LONG. Mr. President, reserving the right to object, may I inquire if the Senator from Missouri expects consideration of the joint resolution to take any appreciable amount of time?

Mr. HENNINGS. Let me say to the distinguished Senator from Louisiana that so far as I know it will not take any longer time than the time required to vote upon it.

Mr. LONG. Would the Senator be willing to agree that, if it takes any extended period of time, more than half an hour, say, he will withdraw the joint resolution from consideration?

Mr. McFARLAND. Mr. President, will the Senator yield?

Mr. HENNINGS. I yield.

Mr. McFARLAND. Let me say to the distinguished Senator from Louisiana that this is very important legislation. It involves temporary housing for people in the flooded area. Instead of taking half an hour, I think the joint resolution can be passed in 2 minutes.

Mr. LONG. If it does not mean that we shall not have a chance to debate the basing-point bill, Senate bill 719, I shall be content.

Mr. McFARLAND. I am sure it will not interfere with the bill referred to by the Senator from Louisiana.

The VICE PRESIDENT. Let the Chair state that what the Senator from Missouri is really asking is that the unfinished business, which, according to the previous unanimous-consent agreement, is Senate bill 719, be temporarily laid aside for consideration of the House joint resolution. If it should require a longer time than seems necessary, the Senator from Louisiana can ask for the regular order, to bring the other bill before the Senate.

Is there objection to the present consideration of the joint resolution?

Mr. WHERRY. Mr. President, reserving the right to object—and I shall not object—I should like to ask the Senator another question or two, because, as I understand, the House joint resolution is not the measure which the Senator from Missouri has been discussing. Am I correct in that respect?

Mr. HENNINGS. Let me say to the distinguished minority leader that I introduced another bill, and I undertook to discuss it, in the hope of being able to call up for consideration later House Joint Resolution 303.

Mr. WHERRY. Let me ask the distinguished Senator from Missouri a question. Is the Senator about to make a statement on the House joint resolution which he is asking to have passed?

Mr. HENNINGS. I was about to make such a statement.

Mr. WHERRY. Then I will withhold any questions until the explanation has been given.

The VICE PRESIDENT. I there objection to the present consideration of House Joint Resolution 303?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. HENNINGS. Mr. President, the joint resolution would provide basic authority to deal effectively with two urgent problems which have arisen in connection with the flooded areas in Missouri, Kansas, and Oklahoma.

The first problem relates to the urgent necessity for providing temporary housing or other emergency shelter immediately for families rendered homeless by the flood disaster. Section 2 of the joint resolution, therefore, amends Public Law No. 875, Eighty-first Congress, which authorizes Federal assistance to States and local governments in major disasters to make it clear that the authorized assistance may, where necessary, include the provision of temporary housing or other emergency shelter for families, who as a result of the disaster are without housing or other emergency shelter. In this connection the present situation in Kansas City is extremely acute and emergency action to provide temporary shelter must be taken immediately.

Mr. WHERRY. Mr. President, will the Senator yield for a question?

Mr. HENNINGS. I shall be glad to yield in a moment. I may say that Mr. Foley, of the Federal Housing Administration, who has been in this area, states that this measure is required to help him do his work effectively in the stricken region, and to place those who have suffered from the floods in temporary shelters.

Mr. WHERRY. The public law which the distinguished Senator mentioned is the disaster relief measure, is it not?

Mr. HENNINGS. The Senator is correct.

Mr. WHERRY. Have appropriations been made for this purpose, or will additional appropriations be required?

Mr. HENNINGS. I understand that appropriations have been made under the $25,000,000 relief bill which was passed a few days ago.

Mr. WHERRY. What the Housing Administrator wishes is the additional authority which he feels to be necessary in order to permit the acquisition of temporary shelter. Is that correct?

Mr. HENNINGS. I am sure that the distinguished minority leader understands that many of these people are living in schools, churches, and tents. Many have no place to live.

Mr. McFARLAND. Mr. President, will the Senator yield?

Mr. HENNINGS. I yield.

Mr. McFARLAND. As I understand, the House joint resolution is practically identical with Senate Joint Resolution 87, which was introduced on Monday by the distinguished junior Senator from Missouri on behalf of himself, the Senator from Alabama [Mr. SPARKMAN], and the Senator from Kansas [Mr. SCHOEPPEL].

Mr. HENNINGS. It is identical, with the exception of one amendment adopted in the House. Incidentally, the bill was unanimously reported from the House committee, and it was passed by the House without dissent or opposition yesterday. The amendment involves the insertion of the words "or reconstruction" after the word "construction" in both places where it occurs. In other words, it was believed in the House—and I am inclined to agree with the amendment—that in some cases in which a house was not completely demolished reconstruction might be necessary, and the words "or reconstruction" were added after the word "construction."

Mr. SCHOEPPEL. Mr. President, will the Senator yield?

Mr. HENNINGS. I am very glad to yield to the Senator from Kansas.

Mr. SCHOEPPEL. The change referred to in the measure which came over from the House, which the distinguished junior Senator from Missouri just mentioned, was inserted in the House measure in order to take care of structures in the flood areas which were destroyed to such extent that a fairly complete reconstruction job is required. That is the only change which was made in the measure introduced by the distinguished junior Senator from Missouri, the Senator from Alabama and myself in the Senate. Is that not correct?

Mr. HENNINGS. The distinguished Senator from Kansas is exactly correct. That is the only change which has been made.

Mr. CARLSON. Mr. President, will the Senator yield?

Mr. HENNINGS. I yield.

Mr. CARLSON. I should like to ask the distinguished Senator from Missouri if this measure would meet the requests which are made by Mr. Foley, of the Federal Housing Administration, to take care of the situation in Kansas not only with respect to the homes which have been completely destroyed, but those which have been damaged to such an extent that they may require repairs.

Mr. HENNINGS. I may say to the distinguished Senator that this measure has the approval of Mr. Foley. In addition, it has been informally cleared with the Bureau of the Budget and with Mr. Charles Wilson, for the Office of Defense Mobilization. Under title I of the Federal Housing Act, as the Senator will recall, modernization and renovation loans are already available for repair work. As I understand it, reconstruction aid under the terms of this bill would be available in the case when a person's home was damaged to such extent that a rather extensive reconstruction job was required.

Mr. CARLSON. Mr. President, will the Senator yield further?

Mr. HENNINGS. I yield to the Senator from Kansas.

Mr. CARLSON. I sincerely hope the Senate will immediately pass the joint resolution, because the situation in the flood areas in three States is critical. I am sure the enactment of the joint resolution would bring relief and comfort to the people who have lost their homes.

Mr. HENNINGS. I thank the Senator for his contribution. There is one other phase of the joint resolution which I believe should be mentioned. It relates to section 1.

Section 1 of the joint resolution relates to the Federal Housing Administration mortgage and insurance programs for moderately priced housing. Under section 8 of the National Housing Act the FHA is authorized to insure mortgage loans up to 95 percent of properties appraised at $5,000 or less or in high cost areas of 95 percent on up to $6,000 of appraised value. The maximum dollar mortgage limitations under section 8 are therefore $4,750 and $5,600, respectively.

Also under section 203 of the National Housing Act the FHA is authorized to insure 95 percent loans on homes appraised at $7,000 or less or in high-cost areas 95 percent loans on properties appraised at $8,000 or less. The maximum dollar limitations under section 203 of the National Housing Act would therefore be $6,650 and $7,600, respectively.

Section 1 of the joint resolution would, therefore, amend section 8 of the National Housing Act so as to permit 100 percent FHA insured loans on properties appraised at $7,000 or less except that in high-cost areas this limit could be increased to $8,000. This insurance, however, would be limited to those cases where the mortgagor is the owner and occupant of the property and establishes to the satisfaction of the Federal Housing Commissioner that his home was destroyed as a result of a flood or other catastrophe which the President pursuant to the Disaster Relief Act (Public Law 75, 81st Cong.) has determined to be a major disaster.

Mr. WHERRY. Mr. President, will the Senator yield?

Mr. HENNINGS. I yield.

Mr. WHERRY. As I understand, the amendment to the Housing Act is necessary to take care of the disaster flood area.

Mr. HENNINGS. It applies only where houses have been destroyed by a flood or other catastrophe which the President has determined to be a major disaster under Public Law 875, Eighty-first Congress.

Mr. WHERRY. The Federal Housing Authority can raise the insurance up to 100 percent of the value in the disaster area.

Mr. HENNINGS. Yes; only in that area.

Mr. WHERRY. What about critical defense areas?

Mr. HENNINGS. It would not affect critical defense areas, for the reason that this legislation is designed to take care of the disaster area, proclaimed as such.

This amendment, of course, would be of material assistance to those families in the flood areas who have lost all their property and would have no means of obtaining the down payment for a new small home which otherwise would be required.

The joint resolution has the approval of the Housing and Home Finance Administrator, Raymond M. Foley, and has been informally cleared with the Bureau of the Budget and with Mr. Charles Wilson, the Director of the Office of Defense Mobilization.

We hope that the distinguished Senator from South Carolina will instruct the FHA to see to it that the builders do not profiteer by giving less than the full loan value to the homeless victims of the flood, and that the agency inspections will be most thorough and rigid. I know I can count on the Chairman of the Banking and Currency Committee [Mr. MAYBANK], his committee and staff to follow through and see that the job is well done.

At this time, Mr. President, I wish to pay tribute to the distinguished majority leader, the able minority leader, the chairman of the Committee on Banking and Currency [Mr. MAYBANK], the senior Senator from Kansas [Mr. SCHOEPPEL], the Senator from Alabama [Mr. SPARKMAN], the junior Senator from Kansas [Mr. CARLSON], and to all Senators who today have displayed their awareness and understanding of the emergency and distress under which the people of our part of the country, who are good American citizens, are laboring.

Mr. SCHOEPPEL. I want to thank the distinguished Senator from Missouri [Mr. HENNINGS] for his kind remarks and for his good work in behalf of the victims of this terrible flood.

I ask unanimous consent to insert in the RECORD at this point in my remarks a brief statement I prepared on the joint resolution and an estimate of the dwelling units flooded in Kansas.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR SCHOEPPEL

The immediate enactment of House Joint Resolution 303 is urgently needed to help relieve suffering and hardship caused by the lack of shelter in the flood disaster areas of Missouri, Kansas, and Oklahoma.

The first section of the resolution would amend the National Housing Act to permit more liberal mortgage insurance for those building low-cost homes to replace their homes lost in a flood or other major disaster. To take advantage of these terms, such a person would have to establish that his home, which he occupied as owner or tenant, was destroyed, or partially destroyed, as a result of a flood or other catastrophe which the President has declared to be a major disaster under the Disaster Relief Act, Public Law 875, Eighty-first Congress. The insured mortgage in these cases could equal 100 percent of the value of the property, as compared to 95 percent authorized for low-cost homes under present law.

This new FHA insurance authority for disaster areas would be included in section 8 (title I) of the act relating to very low-cost houses in urban, suburban, and rural areas. Thus, some of the requirements of title II (covering the regular FHA mortgage insurance program), which would not be practical with respect to housing for persons in areas of floods or other catastrophes, would not be applicable to this disaster program. These requirements relate to such matters as property location and the standards used for determining "economic soundness" under title II.

The maximum mortgage amount provided in section 1 of the resolution is $7,000, or in high-cost areas, $8,000. These correspond to the values of low-cost houses for which maximum 95 percent mortgages can be insured under the existing provisions of title II (sec. 203 (b) (2) (D)). However, the insertion of this new authority in section 8 of the National Housing Act has made it necessary to express the maximum mortgage amounts in terms of increased mortgage ceilings under that section for disaster areas.

Section 2 of the resolution would amend the Disaster Relief Act, Public Law 875, Eighty-first Congress, to authorize Federal agencies when directed by the President to provide temporary housing or other emergency shelter for families who, as a result of a major disaster require such shelter. This shelter would be provided out of funds otherwise available for relief activities under Public Law 875 and subject to the applicable provisions of that law. This section of the resolution would permit the Government to furnish trailers and other portable housing to meet the temporary shelter needs of families in disaster areas. There is a vital need for the Government to furnish this aid at once in the present flood areas. At present there is no legislative authority for the Government to meet this need.

ESTIMATE OF DWELLING UNITS FLOODED IN KANSAS

The following table gives estimates of the number of dwelling units flooded (to the first floor or higher in the principal Kansas towns suffering flood damage. The estimates are preliminary and only approximate. The water is not entirely out of some areas, hence the margin of error in estimation is necessarily wide.

The Kansas data show that 18,380 dwelling units were flooded. This cannot by any means be considered a total of the number of Kansas dwelling units flooded. Dozens of little towns along rivers and creeks are not included in the table. In addition, the data given here omits all farm dwelling units flooded. Damage here has been very great. In the three principal river systems the flooding was uniformly from bluff to bluff at depths of 2 to 8 feet in excess of any previous flood of the last 107 years.

Estimates of flood damaged homes in Missouri are not included because the flood is still in progress there. To date the damage to homes has been much less than in Kansas. In Kansas City, Mo., only about 300 homes out of 149,905 dwelling units were damaged.

The source of the data given are primarily from local governmental officials, relayed through the press and flood relief organizations.

Area	1950 dwelling units	Number units flooded	Percent flooded	Number estimated irreparable
Kansas River:				
Kansas City, Kans.	39,124	4,400	11	2,650
Armourdale	3,200	3,200	100	------
Argentine	(1)	1,000	------	------
Other	(1)	200	------	------
Lawrence	6,538	750	11	(1)
Topeka	26,456	5,100	19	1,000
Manhattan	5,425	1,800	33	200
Salina	8,886	2,000	23	(1)
Junction City	4,501	160	4	40
Neosho River:				
Marion	[2] 669	300	45	(1)
Florence	[2] 442	400	94	(1)
Strong City	[2] 250	70	28	(1)
Council Grove	[2] 956	500	52	(1)
Burlington	[2] 765	50	7	(1)
Iola	2,557	600	23	(1)
Chanute	3,553	700	20	(1)
Marais Des Cygnes River:				
Ottawa	3,403	900	26	(1)
Osawatomie	[2] 1,331	650	49	(1)

[1] Not available.
[2] 1940 data.

Mr. WHERRY. Mr. President, is there anything to be added outside of what the Senator from Missouri has stated? I am perfectly willing to go along, and I know that the Senators from Kansas are anxious to have the joint resolution passed. I believe it should be passed. I should like to ask again whether it applies only to the disaster area.

Mr. HENNINGS. It applies only to the disaster area.

Mr. WHERRY. It is merely a question of giving additional authority to the Housing Agency?

Mr. HENNINGS. The distinguished minority leader is correct.

The VICE PRESIDENT. The question is on the third reading and passage of the joint resolution.

The joint resolution was ordered to a third reading, read the third time, and passed.

The VICE PRESIDENT. Without objection, Senate Joint Resolution 87 is indefinitely postponed.

PRICING PRACTICES

The VICE PRESIDENT. In accordance with the unanimous-consent agreement entered into on July 2, and modified on July 30, the Chair lays before the Senate the unfinished business, Senate bill 719.

The Senate resumed the consideration of the bill (S. 719) to establish beyond doubt that, under the Robinson-Patman Act, it is a complete defense to a charge of price discrimination for the seller to show that its price differential has been made in good faith to meet the equally low price of a competitor.

Mr. KEFAUVER obtained the floor.

Mr. WHERRY. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. WHERRY. In view of the fact that the Senator from Nevada [Mr. McCARRAN], who shares control of the time under the unanimous-consent agreement is not now in the Chamber, I wonder whether the Senator from Tennessee will permit the suggestion of the absence of a quorum, with the time required for the calling of the quorum to be charged equally to both sides.

Mr. KEFAUVER. I yield for that purpose.

Mr. WHERRY. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WHERRY. Mr. President, I ask unanimous consent that the order for a quorum call be rescinded and that further proceedings under the call be suspended.

The VICE PRESIDENT. Is there objection to the request of the Senator from Nebraska? The Chair hears none, and it is so ordered.

The Chair will state that, under the unanimous-consent agreement, there may be 40 minutes of debate on any amendment, and the time is to be equally divided, 20 minutes to a side. There are no amendments pending, none have been offered, and, therefore, the time today, in the absence of amendments, or with amendments, will be divided equally. For tomorrow, the order provides 4 hours for debate, which is also to be divided equally.

Mr. KEFAUVER. Mr. President, the time of proponents of the bill is controlled, of course, under the unanimous-consent order, by the Senator from Nevada [Mr. McCARRAN]. The Senator from Maryland [Mr. O'CONOR] has reported the bill, and all agree that he should speak first. But I take it that the time being taken now will be charged against the time of the Senator from Nevada.

Mr. O'CONOR. Mr. President, I may say that is entirely agreeable, and that is our understanding, also.

The VICE PRESIDENT. Does the Senator from Nevada yield to the Senator from Maryland?

Mr. WHERRY. Mr. President, the Senator from Nevada asked me whether, in his absence, I would control the time for him. It is perfectly agreeable to me, in the absence of the Senator from Nevada, to grant time to the Senator from Maryland, or, if the Senator from Tennessee wishes to speak first, that would be satisfactory to me. Anything Senators desire is satisfactory to me.

Mr. KEFAUVER. I think the Senator from Maryland should speak first.

Mr. WHERRY. How much time does the Senator from Maryland desire?

Mr. O'CONOR. Twenty minutes.

Mr. WHERRY. My understanding is that, on the first day, the time is to be divided equally, so that, so far as I am concerned, the Senator from Maryland may take whatever time he chooses. Am I not correct in my understanding of the situation?

The VICE PRESIDENT. The Senator is correct. The time, both today and tomorrow, is equally divided.

Mr. WHERRY. That being so, I will grant to the Senator from Maryland whatever time he may desire to use.

The VICE PRESIDENT. The Senator from Maryland is recognized.

Mr. O'CONOR. Mr. President, the pending measure, Senate bill 719, is offered as an amendment to the Clayton Act, designed to make it certain that it is not illegal for a seller to discriminate in price or services in order to meet, in good faith, the equally low price or services of a competitor.

Senate bill 719 was introduced on January 29, 1951, by the Senator from Nevada [Mr. McCARRAN], for himself, the Senator from Colorado [Mr. JOHNSON], the Senator from Nebraska [Mr. WHERRY], the Senator from Indiana [Mr. CAPEHART], the Senator from Ohio [Mr. BRICKER], and the senior Senator from Maryland. It was referred to the Senate Committee on the Judiciary. The bill was reported by the committee favorably and without amendment on April 28, 1951. The report is Senate Report 293, which I hope all Senators will have an opportunity to study. On May 4, 1951, the bill came up for Senate consideration, but, upon objection, was passed over. A minority report was filed on May 10, 1951.

It is the objective of Senate bill 719 "to establish beyond doubt that, under the Robinson-Patman Act, it is a complete defense to a charge of price discrimination for the seller to show that its price differential has been made in good faith to meet the equally low price of a competitor." The bill would achieve this purpose by adding a single, clear, unambiguous new subsection to the present law.

For many years it has been congressional policy to foster a system of fair and effective competition, as the basis for a healthy national economy. Congress has often debated how best to implement this general policy, but seldom has departed from it.

The question of the appropriate statutory treatment of price discriminations by sellers has long been a troublesome one. On one hand we have had the contention that price discrimination can be used as a potent weapon in the establishment of monopoly and should be prohibited. On the other hand, it has been contended with equal force that discriminations necessary, in good faith, to meet competition, are justifiable.

The origin of the confusion which Senate bill 719 seeks to allay lies in the dicta of the so-called basing-point decision in which the Supreme Court of the United States declared illegal the basing-point price systems employed in the glucose and cement industries. I refer to the cases of *Corn Products Refining Co.* v. *FTC* (324 U. S. 726 (1945)); *FTC* v. *Staley Mfg. Co.* (324 U. S. 746

(1945)); *FTC* v. *Cement Institute* (333 U. S. 683 (1948)). No substantial dissent from the holdings of these cases, under the particular facts there involved, has been raised; but the implications of the decisions, and the dicta involved, have raised doubt concerning the legality of all delivered-pricing, of freight absorption generally, and of all price discriminations made by sellers in order to meet the lower prices of competitors.

The present language of the Robinson-Patman Act relating to the good faith meeting of competition is believed by some to have contributed to these doubts. The proviso to subsection (b) of that act provides that a seller may rebut a prima facie case of illegal price discrimination by showing that the discrimination was made in good faith to meet the lower price of a competitor. This provision has been rather widely misconstrued. Its ambiguity is well evidenced by the results in the recent Standard Oil litigation. In that case, the Federal Trade Commission adopted the position that the quoted provision of the act does not provide a full defense to the seller who discriminates in price in good faith to meet the lower price of a competitor. A majority of the Supreme Court rejected this contention and held that the provision does establish a full defense. But three Justices of the Supreme Court and three judges of the Seventh Circuit Court of Appeals took the opposite view.

The decision of the Supreme Court in the Standard Oil case cannot be said completely to close the matter, while the statutes themselves remain unclear. Therefore it was felt that permanent legislation was called for.

Even the President, who vetoed a pricing-practices bill last year, and the Federal Trade Commission, which opposes Senate bill 719, say that delivered pricing and freight absorption are not unlawful per se. In his veto message of Senate bill 1008, the President said:

> There is no bar to freight absorption or delivered prices as such.

In its order of June 18, 1951, approving tentative settlement of its proceedings against the American Iron and Steel Institute et al., the Federal Trade Commission wrote that it "is not acting to prohibit or interfere with delivered pricing or freight absorption as such when innocently or independently pursued, regularly or otherwise, with the result of promoting competition."

Particularly in view of the fact that the Standard Oil decision was reached by a closely divided Court, with the possibility thereby implied of a change in the line of decision if the composition of the Court should change, clarification now seems imperative. So long as the uncertainties of the so-called basing-point cases remain uncertainties, the status of freight absorption in our competitive economy will also be uncertain.

Enactment of Senate bill 719 should effectively eliminate the present confusion surrounding the use of delivered-price systems and freight absorption. The absorption of freight is just one method which a seller may use to reduce his price in order to meet the price of a competitor. The question of whether the seller absorbs freight or absorbs some other item of cost is only a question of accounting.

This bill makes two points perfectly clear. First, that it is a complete defense to a charge of price discrimination that it was made in good faith to meet the equally low price of a competitor. Second, that a discrimination is not in good faith, and thus the defense is not available, if the seller knew, or should have known, that the competitor's lower price was unlawful.

The bill, S. 719, is in complete accord with the Supreme Court decision in the Standard Oil case. The Federal Trade Commission itself virtually concedes this. In its letter to the Senator from Nevada [Mr. McCARRAN], the Commission said:

> The bill would add a new subsection * * * in effect writing into the statute the interpretation of existing law expressed by the Supreme Court in the case of Standard Oil versus FTC, * * * in addition to undertaking to define one aspect of the term "good faith." The bill, however, might be construed as shifting the burden of proof in certain respects from the respondent to the Commission in cases involving the "good faith" defense. If this construction is correct, the bill goes beyond the decision of the Supreme Court.

But, Mr. President, the language of the bill is perfectly clear, and if it is not clear, the committee report makes it clear that the burden of proof is not in any way shifted by this bill. The affirmative burden of showing good faith is placed by the bill upon the seller, and he must carry the burden.

It has been suggested that the Standard Oil case is limited to a seller reducing his price to retain a present customer, and that the bill goes beyond the decision to the extent that it applies to a seller reducing his price to gain a new customer. The bill follows the language in the existing law in this respect, and, therefore, can have no greater application than the existing law has.

The facts in the Standard Oil case related to a price reduction to retain a present customer. Therefore, the Court's discussion of the facts was limited to defensive competition. But nowhere in the opinion does the Court indicate a contrary rule would apply where the purpose was to gain a new customer. The contrary appears from the opinion.

Commenting on the good faith defense, the Court said:

> Actual competition, at least in this essential form, is thus preserved.

Again it said:

> The heart of our national economic policy long has been faith in the value of competition.

With respect to the antitrust laws, the Court said:

> In the Sherman and Clayton Acts, as well as in the Robinson-Patman Act, Congress was dealing with competition which it sought to protect and monopoly which it sought to prevent.

Those observations are wholly inconsistent with the notion that a seller can compete only to retain present customers, but not to gain new ones.

Furthermore, this prohibition would apply most severely against small business, for it would restrict their expansion. The large operators now sell in every market. This prohibition would restrict the small-business man by denying him access to new markets where he would be required to meet the going price in order to obtain customers. Furthermore, there is the inherent difficulty in determining who is a customer. Suppose a buyer purchases from three or four suppliers. How frequently does he have to have purchased from each of those suppliers in order to be a customer? If he makes no purchases from one of the suppliers for a week, or a month or 3 months, does he continue to be a customer? If the merchandise is seasonal and he makes no purchases for a year, is he still a customer? If the supplier sells both hammers and nails, and the buyer has previously purchased only nails, is he a customer when it comes to purchasing hammers?

In a nation where competition is regarded so highly it is fantastic to assume that the law would prohibit competition and encourage monopoly by preventing sellers from obtaining new customers.

To summarize, let me say that in laying the bill S. 719 before the Congress, we have attempted to offer a simple statutory clarification of the law governing pricing practices, so far as good faith competition is concerned, in strict accordance with the judicial interpretation of that law by the Supreme Court. On January 8 the Supreme Court ruled that a seller's proof that he lowered his price in good faith to meet the equally low price of a competitor constituted a full defense to a charge of price discrimination under the Robinson-Patman Act. By this bill that is what we seek to have adopted in that basic law.

The purpose of the Robinson-Patman Act was to extend a basic policy of the Congress, that of protecting competition and preventing monopoly, by outlawing price discrimination where it tended substantially to lessen competition. Since a blanket abolition of price discrimination would serve to nullify competition rather than protect it, the act provided that a seller could rebut a prima facie case of price discrimination by showing that his lower price to a purchaser was made in good faith to meet the equally low price of a competitor. Although the language of the act seemed to be plain, it gave rise to a good deal of litigation, and in enforcing the act the Federal Trade Commission displayed a growing tendency, over the 15 years that have ensued since the act was passed, to protect the individual competitor from injury rather than to preclude injury to competition generally. In doing so the Commission was seizing upon a technical argument that the act provided only a procedural, and not a substantive, defense to the seller charged with price discrimination.

Vigorous competition in the American tradition necessarily results in injury to

the losing contestant in a competitive struggle, but so long as price discrimination is used only to meet competition in good faith, and not to defeat competition unfairly, it should not be considered unlawful. This was the general contention of business, but the enforcement activity of the Commission left business confused as to the extent to which it could engage in price competition under the Robinson-Patman Act without being subjected to the long and tedious process of defending a charge of unlawful price discrimination.

Several bills were presented to the Congress in recent years to clarify this situation, but the opponents argued that we should await the decision of the Supreme Court. Finally, in the Standard Oil case, the Supreme Court came forth with a clear decision that the Robinson-Patman Act does afford the seller a complete defense, if he can show that he was acting in good faith to meet competition.

The bill, S. 719, merely proposes to effect statutory clarification of the Robinson-Patman Act in accordance with that decision of the Supreme Court.

It appears that the opponents of this bill, who formerly argued that we should await this very decision of the Supreme Court, are now complicating the issue further by arguing that the bill would serve to overturn the prior decision in the Cement case. That is entirely fallacious, of course, since the defendants in that case were found to have violated the Robinson-Patman Act through conspiratorial use of a basing-point system, resulting in general price discrimination which was clearly shown to have lessened competition generally.

S. 719 does not affect the law regarding basing-point systems, but simply adds legislative assurance to the judicial assurance that a seller is entitled to advance his own cause in competition when he acts in good faith to meet the lower price of a competitor offered to a customer whose business both are seeking. If, in doing so, the seller absorbs freight to reduce his price there is an incidental reflection of the practice involved in maintaining basing-point systems, let us admit, but there is no relation otherwise, and there certainly is no intention to go beyond the plain decision in the Standard Oil case.

Mr. LONG. Mr. President, will the Senator yield for a question?

Mr. O'CONOR. I yield to the Senator from Louisiana.

Mr. LONG. The Senator knows that in the Cement Institute case the Supreme Court found the basing-point-pricing system used by the cement companies to be in violation of the antitrust laws. That was a multiple basing-point system, as I understand.

Mr. O'CONOR. That is correct.

Mr. LONG. Is the Senator under the impression that this bill would make it possible or impossible to put back into effect a multiple basing-point system identical with the one which was in existence at the time the decision was handed down?

Mr. O'CONOR. I think it would be impossible to do so. In my opinion, this bill does not have any bearing upon basing-point systems as such. It is confined entirely to the narrow question of submission of a defense that the seller was lowering his price to meet the equally low price of a competitor, simply and solely under that situation, with the added qualification, which also seeks to avoid illegal action, that even in that isolated case he may not do so if he had knowledge, or if a reasonable man could have thought that the lower price of the competitor had been arrived at in an illegal or conspiratorial manner.

Mr. LONG. The Senator from Maryland knows, does he not, that the committee report which bears his name states that there is no presumption to be drawn from the number of times or the regularity with which various competitors in a business arrive at identical prices? I take that statement to mean that it is the intention of the proposed act that, if the cement companies all over the country arrived in every case at identical prices at every delivery point, there would be no presumption to be drawn that they were working in collusion.

Mr. O'CONOR. I can say in answer to the Senator from Louisiana that there is still open, as there always has been, and as there always should be, the right and the opportunity for any law-enforcement agent to produce the facts to indicate that there had been collusive action. Certainly in our opinion any facts which tend to bear upon that subject would be relevant to show that a conspiracy did in fact exist; and if a conspiracy did in fact exist, this bill would be no protection to the conspirators.

Mr. LONG. In that case, it would be necessary to prove that the various cement companies got together, and to carry the burden of proof of showing that they actually made an agreement, or to produce the agreement. Is not that true?

Mr. O'CONOR. I do not think so. I believe that any facts which would tend to convince a reasonable mind that there had been a collusive agreement, that there had been a meeting of the minds in combination by two or more persons to effect an illegal purpose, would be evidence of a conspiracy as it has been defined by the courts throughout the United States.

Mr. LONG. The Senator from Maryland has had large experience in Government. He is an attorney in his own right, and a very able one. If the Senator were attempting to prosecute a case in which every cement company in the Nation had completely eliminated price competition by virtue of the fact that they all arrived at identical prices at every delivery point, how would he go about proving that there was collusion, or that there had been some sort of agreement to do so, if he were confronted with a committee report which stated that no such presumption whatsoever was to be drawn from the fact that, although the prices were different at every delivery point, each individual competitor always bid exactly the same?

Mr. O'CONOR. I repeat what I stated previously, that at any time a prosecutor could produce evidence which, of itself, might not be sufficient to prove beyond peradventure of doubt that a conspiracy was entered into, but which would be a link in the proof to that end, I think the prosecutor would have the right then, as he has always had it, and as, in our estimation, he always should have it, to produce facts which of themselves would constitute one step toward the proof of the existence of a conspiracy in fact.

Mr. LONG. Mr. President, will the Senator from Maryland yield for a further question?

Mr. O'CONOR. I yield.

Mr. LONG. I hold in my hand the decision of the Supreme Court in the case of Federal Trade Commission against Morton Salt Co. In that case the Court had before it a situation in which the Morton Salt Co. was giving an 11-percent discount on the sale of salt to the American Stores, the National Tea Co., the Kroger Grocery Stores, the Safeway Stores, and the Great Atlantic & Pacific Tea Co. That was a large-quantity discount which was not available to small merchants. That discount was found to be unjustified and was outlawed. The Court stated in that case that if this sort of discount were made legal, as against independent merchants, the same thing could be done with respect to all other commodities sold to grocery stores. I ask the Senator if in that case the Morton Salt Co. had produced evidence that there was any manufacturer of salt, no matter how large or how small, who might have been willing to give the same preference to the Atlantic & Pacific Tea Co. and the other concerns, it would not have been completely legal to continue that discrimination on the ground that it was made in good faith to meet competition?

Mr. O'CONOR. If this bill had been in effect at the time of the Morton Salt case, I do not believe that it could have been availed of as an adequate defense, because, in my opinion, the facts in that case take it completely out of the group to which the proposed law would be applicable, and with respect to which it would make legal an individual uniform pricing system, rather than allowances made through conspiratorial action, or through any improper or unfair discrimination.

Mr. LONG. Did not such a situation exist in the Standard Oil Co. of Indiana case, which is the very springboard for this bill? In that case there was an unjustified wholesale discount made by the Standard Oil Co. to a few of its major customers, which discount was not available to other filling stations. It was contended that the discount was made in good faith, on the ground that another small gasoline company—the Red Indian Co.—was willing to make a discrimination in favor of those few customers. On that basis the court held that the Standard Oil Co. could drop its price to a few major customers without giving all the independents the benefit of it.

What distinction would the Senator draw if some small salt company, which might be able to supply only 10 percent of the needs of any of the major companies, were willing to make an offer of

10 percent quantity discount to the A. & P. or other large concerns? What distinction would the Senator draw between that situation and the situation in the Standard Oil Co. case?

Mr. O'CONOR. I believe the best answer to the Senator's question is to say that the offer itself would be illegal.

Mr. KEFAUVER. Mr. President, will the Senator yield further?

Mr. O'CONOR. I yield further.

Mr. KEFAUVER. Suppose a small salt company did not discriminate, and suppose it offered all its output to one customer. That would not be discriminatory, and there would be nothing illegal about it. However, the mere fact that it may have made the offer of all its output on a nondiscriminatory basis would give the Morton Salt Co. the right to sell to all the large companies, and thus discriminate against the small companies.

Mr. O'CONOR. No. In the first place, it is inconceivable that such a situation would occur. It is repugnant to good business practices, and would not be indulged in by a company which expected to stay in business. Therefore such a practice would not come within the realm of possibility. Again I say that the only situation which the pending bill would cover is one in which the individual company would lower its price to meet an equally low price of its competitor in the one and only case in which there is an absence of any collusive or conspiratorial action or combination.

Mr. KEFAUVER. Mr. President, will the Senator yield further?

Mr. O'CONOR. Yes.

Mr. KEFAUVER. Let us take the salt case a little further. Under the terms of the pending bill why would it not be possible for the small salt company to offer to the A. & P. a certain quantity of salt at a lower price, and then on that basis for the Morton Salt Co. to come in and meet the price? It could make the plea, to which there could be no rebuttal, that it was meeting the competition in good faith.

Mr. O'CONOR. They could meet the price only to the firm to which that offer was made, and could not meet the price generally.

Mr. KEFAUVER. Does the Senator from Maryland believe that there must be an actual sale by the small concern to the large concern in order to enable the large manufacturer to meet the lower price?

Mr. O'CONOR. There must be a bona fide transaction or an offer of a bona fide transaction.

Mr. KEFAUVER. I refer the Senator from Maryland to a statement on page 7 of the committee report, which says:

> Permitting a seller to reduce his price in good faith to meet the equally low price of a competitor does not require that such competitor shall have made actual sales to the customer at the lower price.

Mr. O'CONOR. I referred to that in my response to the Senator from Louisiana.

Mr. KEFAUVER. If he heard about some price which he thought might have been obtained or scheduled, he could make that defense in good faith.

Mr. O'CONOR. As I stated in my response to the Senator from Louisiana, not only must he have knowledge of it but he must have pursued efforts to ascertain the facts, to the extent that a reasonably prudent man would do so, and there cannot be reliance placed upon some far-fetched or some tenuous point which would not have actuated a reasonably prudent man.

Mr. KEFAUVER. As I understand, the Senator contends that if the small salt company made a lower price to the A. & P., the Morton Salt Co. could come in and meet the price, but that it did not force the Morton Salt Co., according to the statement of the Senator, to sell at that lower price to the other big chains?

Mr. O'CONOR. That is correct. The Senator omits from his example the one condition which we believe runs all through the situation, that the practice must be free of any collusive or conspiratorial intent.

Mr. KEFAUVER. I refer the Senator from Maryland to this statement contained at page 7 of the report:

> Nor does it require that a specific offer have been made to the particular customer if in fact the lower price was available to the customer.

Mr. O'CONOR. That is what I said.

Mr. KEFAUVER. So the offer need not have been made to the other small-business concerns in order to enable the Morton Salt Co. to cut its price to all of them.

Mr. O'CONOR. That is what I said all along. If it is a general offer to all in the trade, it would be an adequate defense.

Mr. KEFAUVER. Mr. President, will the Senator yield further?

Mr. O'CONOR. Yes.

Mr. KEFAUVER. The Senator from Maryland admits that as to the Standard Oil Co. case, a reduction was involved, and the only issue presented before the court was whether the reduction could be made to the four companies which had received the lower price for the purpose of retaining a customer.

Mr. O'CONOR. That is correct. That led me to make the explanation which I was attempting to make.

Mr. KEFAUVER. The Senator admits that the bill before the Senate goes further than the Standard Oil Co. decision, and extends the Standard Oil Co. decision, by not only allowing a discriminatory reduction for the purpose of retaining a customer, but also for the purpose of getting a customer of any other company.

Mr. O'CONOR. I do not agree with the Senator from Tennessee. We believe that the pending bill goes no further than the Standard Oil decision. We believe that by fair interpretation the decision reached in the Standard Oil case does cover the situation as we have portrayed it.

Mr. KEFAUVER. Does the Senator admit that insofar as the holding in that case is concerned, the holding was with respect to the retention of a customer?

Mr. O'CONOR. That is correct.

Mr. KEFAUVER. I am sure that the Senator will admit also that in the decision by the Supreme Court in the Standard Oil case the expressions "retain the customer" and "retain the jobber" are used over and over again. Therefore, there is no language to be found in the decision of the Supreme Court in the Standard Oil case which would go as far as has been suggested by the Senator from Maryland.

Mr. O'CONOR. The fallacy of the argument of the Senator from Tennessee—and I say this most respectfully—is that no decision of the Supreme Court is expected to apply only to the specific facts in an isolated case. When the Supreme Court passes upon a given set of facts, and renders a general decision, the decision applies so far as the language of the decision will permit. We say that the language in the Standard Oil decision does cover the situation with which the pending bill deals, and that the pending bill goes no further than the decision.

Mr. KEFAUVER. In other words, the Senator from Maryland is endeavoring to incorporate into statutory form in this bill what he considers to be obiter dictum in the Standard Oil case.

Mr. O'CONOR. No.

Mr. KEFAUVER. And what we consider is not obiter dictum or any part of the decision whatsoever.

Mr. O'CONOR. No.

Mr. KEFAUVER. Would the Senator from Maryland be willing to accept an amendment in order to bring the bill exactly in line with the decision in the Standard Oil case, as he sees it, so as to make the bill apply only to the retention of a customer and not to the securing of any new customers?

Mr. O'CONOR. No. We feel that the bill goes only as far as the decision of the Supreme Court goes, and no further.

Mr. KEFAUVER. We feel that the Supreme Court has not gone that far, and the Senator admits it.

Mr. O'CONOR. No. I will remain in the Chamber and shall be glad to listen with intense interest, as I always do to the Senator from Tennessee, to the explanation of the situation from his standpoint. During the explanation I shall ask permission to propound certain questions on that point.

Mr. KEFAUVER. May I ask one further question?

Mr. O'CONOR. Yes.

Mr. KEFAUVER. The Senator says that the bill does not affect the question of conspiracy, and what not, and does not affect the decision in the Standard Oil case. The Senator is aware, of course, that the leading cases on the subject are the Corn Products case and the Staley Co. case, is he not?

Mr. O'CONOR. Those are the two cases which I have cited in my statement.

Mr. KEFAUVER. Does not the Senator from Maryland believe that the pending bill, together with the report, overrules the decision of the Supreme Court in those two cases?

Mr. O'CONOR. Definitely not.

Mr. KEFAUVER. Mr. President, will the Senator yield for another question?

Mr. O'CONOR. Yes, but, first I should like to say that I feel positively

that there is nothing which would result from the bill, if it became law, which would overturn the decisions in the two cases mentioned by the Senator from Tennessee. Certainly that was not the intent of the sponsors of the bill. It was not the intent of those of us in the Committee on the Judiciary who voted to report the bill favorably, and who collaborated in the report, which is a part of the legislative history of the bill.

Mr. KEFAUVER. If what I am about to submit is not a correct statement of the decision in those two cases, I hope the Senator will correct me. In the Corn Products case the Corn Products Refining Co. had adopted a basing point applicable all over the Nation, with Chicago as the city upon which the basing point was based. The Staley Co. adopted the Corn Products Refining Co.'s basing-point and pricing system, lock, stock, and barrel, exactly as it was. In the Staley case the Supreme Court held that the fact that that company had adopted, lock, stock, and barrel, a basing-point system exactly like that of the Corn Products Refining Co., which was illegal, in and of itself raised an inference upon which the Court could find that it was an illegal system. Yet the Senator, in his report on page 6, has this to say:

> Here again such evidence alone does not prove, and no adverse inference may be drawn, from the frequency or regularity with which a seller meets or offers to meet his competitor's lower prices.

The Staley Co. was meeting the price of the Corn Products Refining Co., and it was adopting the same system which the Supreme Court held was violative of the Robinson-Patman Act.

So how does the Senator feel that this bill, when accompanied with the report which states that no adverse inference can be drawn from the selling practice or basis, can override the decision of the Supreme Court?

Mr. O'CONOR. I intended to answer that question when it was propounded a little while ago by the Senator from Louisiana.

I repeat that we think there is still open, as there always has been and as there always should be in the future, the right of a representative of the Government to product proof as to the existence of a combination or conspiracy or collusive agreement; and that can be done, as the Senator knows because of his great experience, in many ways. Those opportunities and that right will always be available to a prosecutor, and this bill does not in any sense lessen that opportunity or right.

Mr. DOUGLAS. As suggested by the distinguished Senator from Louisiana, in a question which he asked, is it not true that the courts and the Commission have found repeatedly in these cases that where just a few companies are involved, as is true in the cement industry and in many other industries, and as is true in the corn-products industry, it is impossible to find any written papers or minutes of stockholders' meetings or minutes of directors' meetings. In other words, they meet at lunch or they talk on the telephone, and they leave no written evidence at all. Therefore, about the only thing we have to go upon—and, indeed, in the Staley case the only thing on which to base the Court's decision—is the fact that they adopt, lock, stock, and barrel, the same basing-point price system that another company has—in that case, the same one that the Corn Products Refining Co. had.

Does not the Senator feel that this bill, if enacted into law, would substantially take away the main method of proving a case in those circumstances?

Mr. O'CONOR. I do not think it would take away the main method, because I repeat that the burden of proof is upon the seller, and will not be shifted in any sense by the enactment of this bill.

Mr. DOUGLAS. Mr. President, will the Senator yield for a question?

Mr. O'CONOR. I yield.

Mr. DOUGLAS. The report which the distinguished Senator from Maryland submitted to the Senate directly states that "no adverse inference may be drawn from the frequency or regularity with which a seller meets" such a price; and even though the Government produces the evidence of identity of price within a given city, no account is to be taken of it, to judge from the report of the Senator himself.

Mr. O'CONOR. We did not anticipate that an attempt would be made to send persons to prison without being able to prove the commission of an offense. We are familiar with prosecutions, and we do not think that an inference of itself would be sufficient. In other words, we think the Federal Trade Commission should have proof and should be able to produce proof, although the burden will still remain on the seller to do so.

Mr. DOUGLAS. Mr. President, will the Senator yield further?

Mr. O'CONOR. I yield.

Mr. DOUGLAS. The Senator may recall the incident to which I referred last year, namely, the cement bids in the State of Illinois. In that case eight companies submitted bids, for each of 102 counties, so there were 816 bids. In each county the bids of all of the eight firms were identical down to the last cent. The question is whether that was purely a matter of chance.

Mr. O'CONOR. No; but I think that fact is still produceable as evidence.

Mr. DOUGLAS. But the Senator says in the report that "no adverse inference may be drawn from the frequency of regularity with which a seller meets" the lower prices.

Mr. O'CONOR. I think that is a fact which goes into the proof of the whole case.

Mr. DOUGLAS. But the Senator says that "no adverse inference may be drawn" from the coincidence of the bids.

Mr. O'CONOR. That, standing alone, ought not to.

Mr. DOUGLAS. It ought not to?

Mr. O'CONOR. Yes, it ought not to.

Mr. DOUGLAS. I put this question up to one of the best mathematicians in the country, Professor Oakey, of Haverford College, and I asked him what would be the mathematical chance of getting 816 such identical bids. His reply was that it was equal to one over eight followed by 214 zeros; and he went on to say that to accomplish such price identity as that merely by accident would be far more difficult than to pick out at random a single predetermined electron from the total universe. Yet the Senator from Maryland says that that of itself could not be regarded——

Mr. O'CONOR. The Senator answers his own question, and that is that the fact and likelihood of it could be produced before a court, and that all the facts would be considered. But that of itself would not allow a man to be sent to prison.

Mr. DOUGLAS. I should like to point out that the Senator says in the report:

> Here again such evidence alone does not prove, and no adverse inference may be drawn, from the frequency or regularity with which a seller meets or offers to meet his competitor's lower prices.

Mr. O'CONOR. I repeat that that is an element which goes to the over-all proof in the case.

As I have said, many Senators are familiar with the manner in which prosecutions are conducted. I may say to the Senator that I had the experience for 11 years of proving conspiracies in cases and of handling prosecutions of such matters. All of us know the steps which may be taken to prove such charges, and this is one step. The proof must proceed step by step. However, this one step is not the ultimate proof, but it is a step to the result.

Mr. DOUGLAS. If the Senator wishes to say that, then I suggest that the proper language would be that the "regularity with which the bids are met would be persuasive, but not necessarily controlling."

However, the Senator did not use that language. He said, "No adverse inference may be drawn"—which means that it is ruled out completely.

Mr. O'CONOR. The difficulty with the Senator's analogy is that in that case we were talking about the individual case and the fact that an individual adopted a lower price to meet the equally low price of a competitor, in good faith. We said that of itself would not be sufficient, and no inference should be drawn.

However, the Senator from Illinois in his illustration takes an entirely different situation. He takes a case where the chances—to use his own mathematical calculation—are so completely one-sided that unquestionably that fact would be one step in the ultimate proof of a conspiracy. However, the Senator from Illinois has taken a situation entirely different from the one which was being described by the committee in its report to which the Senator from Illinois has referred. So we have been talking about two entirely different things.

Mr. DOUGLAS. Does the Senator mean that he was talking about an individual company, but I was talking about several companies?

Mr. O'CONOR. In that particular connection, that is the point.

Mr. DOUGLAS. I should like to point out to the Senator that the next sentence in the report reads as follows:

Where sellers—

Not one seller, but sellers—

are in fact engaged in price competition, there is no limitation upon the frequency or regularity with which they may meet the equally low price of a competitor.

In other words, there is no limit to which the whole group of sellers may do that.

Mr. O'CONOR. Obviously, if one individual may do it, then in given States, when acting separately and apart, not acting jointly or in conspiracy, and with no collusive agreement between them, individuals in Illinois or Louisiana can act separately, but only when they act in good faith and, secondly, only when they have reason to believe or have knowledge of the fact that the lower price of the competitor was arrived at through no illegal action. If they have any such belief or knowledge, or if a reasonably prudent man would have thought that they had arrived at the lower price through collusive agreement, they were estopped from lowering the price in order to meet a competitor's price.

Mr. DOUGLAS. But the frequency and regularity with which the prices agreed would have no bearing upon the final decision.

Mr. O'CONOR. If the element of good faith were present; and that is what the Senator has avoided and has eliminated entirely.

Mr. DOUGLAS. What is good faith?

Mr. O'CONOR. I think good faith is understandable. It is the first time I have heard anyone on the Senate floor express any doubt as to what good faith is.

Mr. WHERRY. Mr. President, will the Senator yield?

Mr. O'CONOR. I yield to the Senator from Nebraska.

Mr. WHERRY. The bill does not change the language of the law, so far as good faith is concerned. That is already a part of the statute.

Mr. O'CONOR. Precisely.

Mr. WHERRY. Whatever has been good faith throughout the years, could be interpreted still to be good faith today.

Mr. DOUGLAS. Does the Senator say a basing-point system involves bad faith?

Mr. WHERRY. Mr. President, will the Senator from Maryland yield?

Mr. O'CONOR. I yield to the Senator from Nebraska.

Mr. WHERRY. Is it not a fact that in the pending bill the seller is affirmatively required to prove that he met competition at the lowest price, in good faith? Is not that the entire problem which is involved here?

Mr. O'CONOR. I agree entirely with what the Senator from Nebraska says.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 4329) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of such District for the fiscal year ending June 30, 1952, and for other purposes, and that the House had receded from its disagreement to the amendments of the Senate numbered 10, 12, 21, 25, 26, and 28 to the bill, and concurred therein.

DISTRICT OF COLUMBIA APPROPRIATIONS, 1952—CONFERENCE REPORT

Mr. HILL. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 4329) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of such District for the fiscal year ending June 30, 1952, and for other purposes, and I ask unanimous consent for its immediate consideration.

The VICE PRESIDENT. The report will be read for the information of the Senate.

The report was read.

(For conference report, see House proceedings of August 1, 1951, p. 9319.)

The VICE PRESIDENT. Is there objection to the present consideration of the conference report?

There being no objection, the report was considered and agreed to.

The VICE PRESIDENT laid before the Senate a message from the House of Representatives announcing its action on certain amendments of the Senate to House bill 4329, which was read as follows:

IN THE HOUSE OF REPRESENTATIVES, U. S.,
August 1, 1951.

Resolved, That the House recede from its disagreement to the amendments of the Senate numbered 10, 12, 21, 25, 26, and 28 to the bill (H. R. 4329) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of such District for the fiscal year ending June 30, 1952, and for other purposes, and concur therein.

PRICING PRACTICES

The Senate resumed the consideration of the bill (S. 719) to establish beyond doubt that, under the Robinson-Patman Act, it is a complete defense to a charge of price discrimination for the seller to show that its price differential has been made in good faith to meet the equally low price of a competitor.

Mr. KEFAUVER. Mr. President, the pending bill is a further effort presented on behalf of certain monopolistic interests to weaken the antitrust laws of the Nation, to scuttle completely the Robinson-Patman Act, to make possible the establishment of a multiple basing-point system, and to enable large suppliers to discriminate again in favor of large purchasers, to the detriment and destruction of small business.

To pass this bill would turn the clock back many, many years in the effort to secure workable antitrust laws which would enable the small concern or individual to have an opportunity of getting along. I think it may be of some little benefit to trace very briefly the history of the pending bill and the preceding acts which have led up to its consideration by the Senate today.

We all know about the conditions prior to 1890, which led to the enactment of the Sherman Act in that year. At that time ruthless monopolists were discriminating against and freezing out small businesses in every possible way, with the result that economic concentration, particularly in certain lines, was becoming very acute, and our free enterprise system was in jeopardy. This led to the passage of the Sherman Act in 1890.

Then, in the early years following the turn of the century, a great many sellers would give special discounts and concessions to large purchasers. Usually the chain organizations were able to extract such concessions and discounts that the independents were unable to meet the competition, and, by the thousands, they were being driven out of business.

It also became necessary not only to try to break up monopolies after they had been created, but to prevent monopolistic mergers in the first instance. So in 1914, in order to meet the danger to competition from illegal price discrimination, and also to prevent the creation of monopolies in the first place, Congress enacted the Clayton Act. Paraphrasing, section 2 of the Clayton Act at that time provided that it should be unlawful for a seller to discriminate; that it should be unlawful for any person engaged in commerce to discriminate in price between different purchasers of commodities, when the effect of such discrimination might be substantially to lessen competition or tend to create a monopoly in any article of commerce; and the clause was then included that "nothing herein contained shall prevent discrimination in price in the same or different communities, made in good faith to meet competition." In other words, the original section 2 had exactly the same intent, though it did not go quite so far as the proponents of the pending bill are endeavoring to go today.

The experience following 1914 showed that the large purchasers were always able to get around section 2 of the Clayton Act by defending on the ground that they were meeting some kind of competition, either real, or something about which they had heard; so that the suppliers continued to furnish the giant chains merchandise at much lower prices than the prices at which they were furnishing them to independents. There were discounts and rebates.

Nothing substantial was done under section 2 of the Clayton Act to prevent the destruction of small businesses by price discrimination, because it was always possible for big business to defend, and to defend successfully, on the ground that it was meeting some kind of competition in the making of unlawful discriminations. So, as time went on, the Federal Trade Commission found that it was literally impossible to enforce

section 2 of the Clayton Act and to prevent discrimination; that with the language and provisions of the Act standing as they were, big business could defend on the ground that it was meeting competition in good faith.

That situation resulted in investigations which were conducted later by the Federal Trade Commission and by committees of the House of Representatives, particularly by the Patman committee and other committees, which brought to light price discriminations in favor of large purchasers, notably the great chain organizations, discriminations which were indeed shocking, discriminations by which small businesses were being driven to the wall, because they could not obtain rebates and the lower prices which were being given to the large purchasers. The discriminations were defended on the ground that they were made for the purpose of meeting competition in good faith.

In 1936 the Congress decided to take some action about the situation, and it had before it three possible solutions to the problem. Congress could either leave the matter as it was, and say that good faith should be an absolute defense. History shows that that has not worked, that the discriminations continued just as before. Of course, what the proponents of the bill desire is to carry us back to the condition which prevailed between 1916 and 1936.

A second solution was that the Congress could say that good faith should be a defense, if, in fact, there were any unlawful discriminations. The conference report and the debates in the House and Senate are very clear that in seeking to reach a compromise between those two extremes—the Congress did not accept either of them. That is, it did not make good faith an absolute defense, and it did not eliminate good faith as a defense to unlawful discrimination. It said that that defense should be regarded as a procedural matter.

Section 2 (b) was written and added to section 2 (a), so that, when the Federal Trade Commission first showed a price discrimination, the seller could then defend upon two grounds. In other words, under section 2 (a), he could show that the lower price was due to a saving in costs or in methods of manufacturing, or he could defend on the ground that he made the lower price to meet competition in good faith. The making of that plea is not a conclusive defense. Then the question turned on the facts of the case as to whether there was actually a lessening of competition or the creation of a monopoly, and if there were, in spite of the fact that he may have defended on that ground, if there were, in fact, a lessening of competition or the creation of a monopoly, he would be guilty, nevertheless.

There is no question that that was the intention of Congress. It is set forth in the report. The sponsor of the House bill, Representative PATMAN said that to make good faith a complete defense would be ruinous to the whole legislation. Mr. Justice Stone, in the *Staley case* (324 U. S. 752), had this to say in a unanimous decision:

> It will be noted that the defense that the price discriminations were made in order to meet competition, is, under the statute, a matter of rebutting the Commission's prima facie case. Prior to the Robinson-Patman amendments, section 2 of the Clayton Act provided that nothing contained in it shall prevent discriminations in price "made in good faith to meet competition." The change in language of this exception was for the purpose of making the defense a matter of evidence in each case, raising a question of fact as to whether the competition justified the discrimination.

Carrying on from that point—and that has been the law for a long time—the Cement decision was handed down by the Supreme Court in 1948. Immediately after the decision in the Cement case there was a strong effort in Congress not to put that decision into statutory law. Whenever a decision is favorable to certain interests, they want to put it into statutory law; whenever it is unfavorable other interests want to repeal the decision of the Supreme Court. In the Cement case the Supreme Court simply held that where certain cement companies had gotten together on a collusive price-fixing basis by absorbing freight, their action was illegal. There was nothing in that decision, and it is definitely so stated, which provides that independent freight absorption, not done in collusion with others, is illegal. On the contrary, the Supreme Court states that it is fully justified. There has never been any question about a person having a right to absorb freight independently if he wants to do so.

Mr. Justice Black, at page 42 of the decision, said:

> Much of the objection to the order appears to rest on the premise that its terms will bar an individual cement producer from selling cement at delivered prices such that its net return from one customer will be less than from that of another, even if the sale be in good faith to meet the lower price of a competitor. The Commission disclaims that the order can possibly be so understood, nor do we so understand it.

In any event, there was an effort to make possible the old basing-point system, at least, the multiple basing-point system, by the introduction of Senate bill 1008, on which hearings were held. The purpose was stated to be to overrule or to change the inference of the Supreme Court's decision in the Cement case. But it should be made clear that the question of the individual right to absorb freight is not involved. It has never been illegal. No court, no commission, and no responsible person have ever held otherwise.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. DOUGLAS. Before the Senator proceeds to a discussion of the basing-point system, may I ask a question about the effect of the Robinson-Patman Act, so far as the defense of good faith is concerned? Do I correctly understand the Senator's point to be that the defense of good faith is nonapplicable against discrimination, provided the effects of such discrimination are not adverse to competition?

Mr. KEFAUVER. That is correct.

Mr. DOUGLAS. But where the effects of such discrimination are, in the words of the act, "to lessen competition" or "to tend to create a monopoly" or are intended to destroy or to prevent competition, in such cases the defense of good faith would not be controlling.

Mr. KEFAUVER. That is correct.

Mr. DOUGLAS. The Robinson-Patman Act and the decisions under it look therefore to the effects of action rather than to intent. Is that correct?

Mr. KEFAUVER. That is correct.

Mr. DOUGLAS. Although I am not a lawyer, am I not correct in saying that it is the tendency of law, as it progresses, not to go into the minds of the actors, but to go into the effects of their acts and if the effects of their acts are adverse to society, then the intent of the actor is regarded as noncontrolling?

Mr. KEFAUVER. That was the purpose of the Robinson-Patman Act, and that is the intention of the law.

Mr. DOUGLAS. It is presumed that the ordinary citizen should know the consequences of his act, is it not?

Mr. KEFAUVER. That is correct, of course.

Mr. DOUGLAS. And be held responsible.

Mr. KEFAUVER. That is correct.

Mr. BUTLER of Maryland. Mr. President, will the Senator yield?

Mr. KEFAUVER. Before yielding to the Senator from Maryland, I should like to emphasize the point which has been brought out. There can be no question whatsoever that under the Robinson-Patman Act, Congress intended to accomplish something. Under the 1914 act, selling in good faith was a complete defense. It did not work, and Congress wanted to change the law. It changed it by making good faith a matter of evidence. If the sellers depended on good faith, it was all right, provided competition were not adversely affected or a monopoly created. If a monopoly were created, and competition were adversely affected, then meeting competition in good faith was not a defense. The Supreme Court, by a 4 to 3 decision, which the proponents of the bill want to put into statutory law, to a limited extent ignored and overlooked the plain intention of Congress in passing the Robinson-Patman Act. It held, for practical purposes, that Congress passed the Robinson-Patman Act to do nothing, because it goes back almost exactly to the 1914 conditions.

I now yield to the Senator from Maryland.

Mr. BUTLER of Maryland. The Senator from Tennessee has very largely answered the question which I was going to ask. The argument made by the Senator from Illinois was certainly the argument made by the Federal Trade Commission before the Supreme Court, and it was rejected by that Court in the Standard Oil Co. case.

Mr. KEFAUVER. By a 5 to 3 decision. Justice Minton, who had, as a circuit court judge, decided the Standard Oil Co. case in favor of the Federal Trade Commission, did not participate in the decision of the Supreme Court.

Mr. BUTLER of Maryland. Is it not also true that section 2 (b) of the Robinson-Patman Act very explicitly says that if the discrimination is to meet an equally low price offered by someone else to the customer, the seller may discriminate, but that the burden is on him to show that he has done so in good faith.

Mr. KEFAUVER. That is correct.

Mr. BUTLER of Maryland. And the bill, S. 719, goes further than that, and says that the mere following of a price formula of the buyer would not be a defense. In other words, there has to be honest-to-goodness, good faith, in the transaction.

Mr. KEFAUVER. No; the pending bill makes it substantially impossible for the Federal Trade Commission ever to win any case by proving that there was a price-fixing arrangement, because no adverse inference can be drawn from the fact that one company follows identically, to the last percentage of a penny, the pricing system of another.

Mr. BUTLER of Maryland. I thought that was exactly what the Supreme Court in the Staley case said could not be done.

Mr. KEFAUVER. That is correct, but the effect of the pending bill is to overrule the Staley case.

Mr. BUTLER of Maryland. I certainly do not think the bill is intended to do that.

Mr. KEFAUVER. Whether it is intended to do that or not, it certainly would do so. The Staley Manufacturing Co. adopted identically the pricing system of the Corn Products Refining Co. and said that they were meeting competition by adopting that pricing system. The Supreme Court held that the inference was that they had joined in a collusion with the Corn Products Refining Co.; that that was the only conclusion that could be drawn from the fact that they had adopted the same system; and the Court held them guilty.

The report on Senate bill 719 says that no adverse inference can be drawn from the fact that one adopts the same pricing system as the other.

Mr. BUTLER of Maryland. The report does not say that. It says that it shall not be an excuse.

Mr. KEFAUVER. I am glad the Senator has raised that point. The report says on page 6:

> Here again such evidence alone does not prove, and no adverse inference may be drawn, from the frequency or regularity with which a seller meets or offers to meet his competitor's lower prices. Where sellers are in fact engaged in price competition, there is not limitation upon the frequency or regularity with which they may meet the equally low price of a competitor, absent any agreement or understanding tending to conspiracy.

So that what was proved in the Staley case, and what won the Staley case for the Federal Trade Commission, could not have been of any evidential value whatsoever if this bill had been in effect, because no inference could have been drawn from it.

Mr. BUTLER of Maryland. But on the same page the report also says:

> Competitors do not normally have ready access to one another's books of accounts. In the ordinary course the seller may safely start with the assumption that the lower price of a competitor which he is meeting is lawful.

Mr. KEFAUVER. That makes it that much worse.

Mr. BUTLER of Maryland. I see nothing wrong with that.

Mr. KEFAUVER. The Senator from Maryland knows, of course, that in the case of large companies, when one adopts the price of the other, they do not enter into printed agreements, or put the agreements on the minutes of the directors' meetings. It is done after oral conversations. In the Staley case substantially the only evidence adduced was that one company had adopted the pricing system of the other.

Mr. BUTLER of Maryland. And it was held to be illegal, and condemned by the court.

Mr. KEFAUVER. But it could not be held to be illegal if the pending bill should become the law of the land. In such event there can be no question that the decision of the Court would be different.

Mr. BUTLER of Maryland. The next line of the report reads:

> But he may not close his eyes to obvious facts which might require a contrary conclusion, nor ignore warnings of such a nature as to put a reasonable man on notice to that effect.

It seems to me that that is a complete protection.

Mr. KEFAUVER. It is impossible to prove what a man had before his eyes or did not have before his eyes.

Mr. BUTLER of Maryland. If a man follows the pricing formula of everybody else it seems to me that that would be sufficient, under the language of the report, to put him on reasonable notice.

Mr. KEFAUVER. But the bill says that no adverse inference may be drawn. The rest is hoopla, in common language.

Mr. BUTLER of Maryland. But the Senator would construe section 2 (b) of the Robinson-Patman Act as if it contained a further proviso that a man may discriminate to meet the price of a competitor, but that in so doing he may not encourage monopoly or engage in a practice which may have that effect.

Mr. KEFAUVER. Section 2 (b) as it now stands says that he can lower his price to meet the lower price of a competitor provided it does not lessen competition or tend to create a monopoly. That is really what it says.

Mr. BUTLER of Maryland. No; section 2 (b) does not say that.

Mr. KEFAUVER. I am paraphrasing the effect of it.

Mr. BUTLER of Maryland. As I understand section 2 (b), if in good faith a man reduces his price or discriminates he is all right——

Mr. KEFAUVER. No, no.

Mr. BUTLER of Maryland. But the Senator would add that if by doing that he encourages monopoly, or if by so doing it may even tend to create a monopoly—does not actually do so, but may tend to do so—then he is in violation of the act.

Mr. KEFAUVER. No; those who oppose the bill do not add anything. We would leave it as it is, but we would make sure that the original intent was carried out. As the law now stands, according to our interpretation, if he discriminates he can depend on good faith as an evidential matter, but if it then develops that even though he may be meeting competition in good faith, the result is to lessen competition or create a monopoly, then it is not good faith, and is not evidence.

Mr. BUTLER of Maryland. Why does the Senator say that as an evidentiary matter it is a statutory defense to a charge of monopoly?

Mr. KEFAUVER. The Senator will find that it is not set forth as a statutory defense. I will read the act. It never has been interpreted by the courts—it was not so interpreted in the Staley case—as a statutory defense.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. DOUGLAS. In response to the question of the Senator from Maryland, although the Senator from Tennessee can answer it better, is it not true that the defense of good faith is valid against a finding of discrimination as such, but if it is later found that the discrimination will lessen competition, good faith is not an adequate defense against such a lessening of competition?

Mr. BUTLER of Maryland. That is the point I am getting at. In other words, there can be a perfectly legal and valid act performed in the best of good faith, but still it can be in violation of law if it tends to lessen competition. Is that not true?

Mr. DOUGLAS. That is the present Robinson-Patman Act; and it is our contention that the pending bill, by making the good-faith defense complete against everything, makes it valid even though the effect is substantially to lessen competition. That is the milk in the coconut.

Mr. BUTLER of Maryland. That is what I wanted to get at.

Mr. DOUGLAS. That is the milk in the coconut.

Mr. BUTLER of Maryland. As I construe section 2 (b), at the present time, that would be a complete defense if in good faith discrimination was practiced to meet the price of somebody else.

Mr. DOUGLAS. It can be used to rebut a charge of price discrimination, but not a defense against a charge of price discrimination which may substantially lessen competition. So that the good-faith defense is not complete and absolute now, but would be if the pending bill should become the law.

I hope the Senator from Tennessee will excuse me for injecting these remarks.

Mr. KEFAUVER. Yes. That is exactly it. The conference report, which is set forth in the opinion in the Standard Oil case, shows that to be the contention of the conferees, and the intention of Congress, at the time section 2 (a) and section 2 (b) were written. The Senator will find that in the footnote in the conference report.

Mr. BUTLER of Maryland. Mr. President, will the Senator yield further?

Mr. KEFAUVER. Yes.

Mr. BUTLER of Maryland. The Senator from Tennessee said that no question as to the absorption of freight was involved.

Mr. KEFAUVER. No. There is no question involved about the right of an individual, acting alone, to sell on a basing point system, provided he does not join, as the Cement Institute did, with others in a conspiracy.

Mr. BUTLER of Maryland. I have received a number of letters from constituents complaining of that very thing.

Mr. KEFAUVER. That has been the propaganda which has been put out.

Mr. BUTLER of Maryland. They urge the passage of this bill to relieve them of the burden of the freight differential, so as to meet competition.

Mr. KEFAUVER. That has been the propaganda which has been put out, as to the necessity for the passage of the pending bill. But the Supreme Court, in the Cement case and in every other case in which the issue has been involved, and the Federal Trade Commission, have said very explicitly and definitely that there can be no question about the right of an individual acting alone, to absorb freight or to sell on a basing point system if he wishes to do so. Let me read again the language of the Supreme Court decision in the Cement case, which has been under dispute. This is the statement of Mr. Justice Black:

> Most of the objections to the order appear to rest on the premise that its terms will bar an individual cement producer from selling cement at delivered price such that its net return from one customer will be less than that from another even if the sale be made in good faith to meet the lower price of a competitor. The Commission disclaims that the order can possibly be so understood. Nor do we so understand it.

Mr. President, I have several rulings of the Federal Trade Commission which make that very clear. So the question of the right of an individual to sell on a basing point basis is not involved here. As a matter of fact, the majority report disclaims that that is the issue, even though later it is sought to be brought in inferentially. Let me read from the footnote to the majority report:

> This controversy has also been referred to as the "basing point controversy," but such a reference is misleading and should be avoided since it is settled law that use of a basing point pricing system is unlawful. See *Corn Products Refining Co.* v. *Federal Trade Commission* (324 U. S. 726 (1945)); *Federal Trade Commission* v. *Cement Institute* (333 U. S. 683 (1948)).

Mr. BUTLER of Maryland. Mr. President, from what is the Senator reading?

Mr. KEFAUVER. From the majority report on page 1, in the footnote.

Mr. President, I read from a press release of the Federal Trade Commission on June 10, 1950, on the matter of independent freight absorption. This is found at page 320 of the hearings before the Small Business Committee of the Senate:

> In the last few days some portions of the press and radio have made incorrect references to and misrepresentations of the proposed order to cease and desist in the Federal Trade Commission case relating to the pricing practices of 16 principal manufacturers and sellers of corn products in the United States.
>
> Some statements made in newspapers and over the radio failed to make clear that the proposed order would prohibit use of basing-point and zone systems of pricing only when such systems involve concerted action, conspiracy, or unlawful agreements among sellers of corn products.
>
> The proposed order was submitted by counsel on June 6 to a Federal Trade Commission trial examiner for consideration. It was the subject of a press release issued by the Commission on June 7. * * *
>
> Those misstatements and misinterpretations should be corrected. The public and the business community should not be left with the impression that the Federal Trade Commission is acting or has ever acted to prohibit or interfere with delivered pricing or freight absorption when innocently and independently pursued with the result of promoting competition. The Commission and the courts have acted to stop those practices only when they have involved collusion, conspiracy, or unjust discriminations with resulting damage to competition and the public interest. The Commission understands the proposed order to cease and desist in the present Corn Products case to be within those bounds.

Mr. BUTLER of Maryland. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. BUTLER of Maryland. Is it the Senator's intention, because of the confusion which exists, to offer an amendment stating specifically that freight absorption is legal and valid? I ask the Senator that question because I have received a volume of mail on the subject, and there seems to be a great deal of difficulty about that point. Many people do not understand it.

Mr. KEFAUVER. A few minutes ago the Senator's colleague [Mr. O'CONOR] said he understood it. He is a proponent of the bill.

Mr. BUTLER of Maryland. I was not then in the Chamber.

Mr. KEFAUVER. We are not the proponents of the bill. However, there can be no question that independent freight absorption is perfectly legal. In the confusion, that issue has been brought in by some for the purpose of trying to add some interest in the bill.

Mr. BUTLER of Maryland. I asked the question because the report of the hearings before the Select Committee on Small Business, which was placed on our desks this morning, suggests that some amendments may be offered to the pending bill. I was inquiring as to whether that would be one of them.

Mr. KEFAUVER. I had not proposed to offer such an amendment, because I think the issue is clear. I have another amendment which I intend to offer, and which I shall discuss later.

Mr. President, I wish to address myself briefly to the arguments presented on behalf of Senate bill 719, as summarized in the report of the Senate Small Business Committee. At the outset I wish to make it clear that my remarks are directed not against the report but against the arguments which the report merely summarizes. In my opinion, the Senate Small Business Committee in preparing this report has done an excellent job. To the best of my knowledge the report presents all of the arguments that have ever been made on behalf of this type of bill. And with one or two omissions, which I shall later discuss, it presents all of the arguments that have been advanced in opposition.

Before beginning my examination of the arguments for the bill, I wish to point out that the burden of proof as to its necessity lies upon its supporters. We are being asked to place on the statute books a new law. It is up to the supporters of the bill to make a case for it; it is up to them to describe why it is necessary. This the bill's supporters have failed to do. We have heard only vague references to the need for clarification and the necessity of following the Supreme Court. But sound legal arguments for the measure have, for the most part, been conspicuous by their absence.

What can explain this failure on the part of the bill's supporters to present a case? Is it because actually they do not have one? Or is it because they feel that they have the votes, anyway, to ram the measure down the Senate's throat? If the latter is the case, may I point out that Senators who vote for this measure, in the absence of a clear and forceful presentation of its need, may in the future find themselves in a somewhat awkward position. They may find themselves criticized on the grounds that they voted to weaken the antitrust laws. They may find themselves denounced by small-business men in their own home States. And if no convincing argument is presented on behalf of the bill, what possible answer can be given for their vote? And may I point out that the small-business organizations—the druggists, the wholesale grocers, the tire dealers, the filling station operators, and so on—are highly vocal and well-organized not only in the Nation's Capital but in most of the individual States as well.

I say it is not enough for the supporters of the measure to rest their case on the mere fact that they may have the votes. They have a responsibility to their supporters in this body, particularly those who have not had an opportunity to study this rather complicated matter. They have a responsibility, to protect their supporters against inevitable criticism by presenting a clear and logical case for the passage of this bill. This, I repeat, they have thus far failed to do.

Turning now to the arguments which have been advanced on behalf of S. 719, as summarized in the report of the Senate Small Business Committee, I shall proceed to examine them one by one. I hope that when I have finished my examination the Members of this body who are inclined to support the measure, but who have not had the opportunity to examine its intricacies, may wish to reexamine their position. In my belief, many of these Members may come to share my opinion that on a matter as important as this, full and complete hearings should be held by the standing legislative committee which has jurisdiction over the antitrust laws—the Judiciary Committee.

Mr. President, this is a very intricate, involved bill, which affects the economy

of the Nation in a very vital way. It overrules the Robinson-Patman Act. It affects every business, and particularly the small businesses of the country. Yet the bill has been reported by the Judiciary Committee without any hearings whatsoever. No one has had an opportunity to appear before that committee and explain and discuss how it would affect particular businesses. Applications were made by interested persons for the purpose of appearing before the committee, but they were not given the opportunity to be heard.

If the bill is not drastically amended, it certainly should be recommitted to the Judiciary Committee for the purpose of holding hearings on it. It is very interesting to note that the Small Business Committee of the Senate, which has done a great job in holding some hearings on the bill, in which witnesses have appeared pro and con, has just made those hearings available to Members of the Senate. Senators have not had an opportunity to read them. Witnesses did not appear before the Committee on the Judiciary, and members of that committee, which has jurisdiction of the bill, have not had an opportunity to hear the witnesses and to ask them questions.

The first argument in the report in support of the passage of the bill is that S. 719 merely conforms statutory law to the Supreme Court's interpretation of section 2 (b) of the Clayton Act as recently enunciated in the Standard Oil of Indiana case. In addition, S. 719 clarifies existing law by providing a pertinent standard for judging when the price of a competitor has been met in "good faith."

Mr. President, the first argument maintains, in effect, that under the Constitution it is the duty of the Supreme Court to legislate and the obligation of the Congress to confirm such legislation. This would seem to be a rather unique statement of the division of powers contained in the Constitution. I doubt seriously whether any such statement is to be found in any textbook or in any treatise on constitutional law.

It is not inappropriate to point out that this was certainly not the position taken by the present supporters of S. 719 only 3 years ago following the Cement decision. Then, they were most critical of the Supreme Court, denouncing it on the ground that it had usurped the proper duties and responsibilities of the legislature by enacting "judicial legislation." But now that the majority of the Supreme Court has handed them a favorable decision, these same individuals are filled with awe and reverence for that august body. Now the criticisms of 3 years ago are forgotten. We hear nothing but paeans of praise for the highest Court of the land. The wisdom of the Court is extolled to the skies, and we are informed that since the Court has shown the way, it is the duty of the legislature to follow.

Many years ago, when I studied constitutional law, I gathered the impression that it was the duty of Congress, not the Supreme Court, to decide what was and what was not sound and desirable national policy. I was taught that it was the duty of the Supreme Court merely to determine the intent of Congress and to apply its interpretation of congressional intent to specific cases. Time and time again the Supreme Court, itself, has insisted that its powers do not and should not include a determination of what is sound national policy.

The supporters of the bill must feel that the decision of the Supreme Court is very shaky. They must feel, and some of them must know, that the intention of Congress was not followed by the decision of the Supreme Court in the Standard Oil Co. case. If that is not correct, why all the haste to put the decision into statutory law? If it is a sound decision, would it not be felt that it would meet the test of time and the arguments against its validity? The inference contained in the report was that the supporters of the bill were afraid the decision of the Supreme Court might not stand, and since they have a favorable decision they want to get it into statutory form.

No, Mr. President; S. 719 cannot be defended on the grounds that it is the duty of Congress to freeze into statutory law each successive decision of the Supreme Court.

Furthermore, I should like to point out that S. 719 does something more than merely freeze the Standard Oil of Indiana decision into statutory law. Actually, it goes beyond the Supreme Court decision. In its summary of the arguments against S. 719, the report of the Senate Small Business Committee points out three ways in which the measure goes beyond the Supreme Court decision. Actually, there is a fourth way in which it goes beyond the decision, which I shall also discuss.

In the first place, S. 719 goes beyond the Supreme Court decision by shifting the burden of proof. Instead of the defendant having to prove good faith, the Federal Trade Commission will have to prove bad faith. Since the Robinson-Patman Act was passed in 1936, there has been absolutely no question that the burden of proof of good faith rests with the defendant. The procedure under that act has been as follows: First, the Federal Trade Commission makes out a prima facie case of price discrimination; second, the defendant may then attempt to justify that discrimination in two ways. He may avail himself of the cost defense, that is, he may show that the discrimination was justified on the basis of savings in cost, or he may avail himself of the good faith defense, that is, he may show that the discriminations were made in good faith to meet the equally low price of a competitor; third, following the making of these defenses, the burden shifts back to the Commission which then has the obligation of showing that the discrimination may substantially lessen competition or tend to create a monopoly. There has never been the slightest question but that this is the procedure under the Robinson-Patman Act, with the burden being first on the Commission, then shifting to the respondent, and then back to the Commission.

Under S. 719, however, the burden in all three steps would be upon the Commission. The Commission would have to prove (a) that there was a discrimination, (b) that it injured competition, and (c) that it was not made in good faith, that is, that it was made in bad faith. This, of course, would place an almost impossible burden on the Commission.

In the second place, S. 719 goes beyond the Supreme Court decision, in that it makes good faith a complete defense, not only for those price discriminations which are made "to retain" a customer, as the Supreme Court held, but for any purposes, aggressive as well as defensive. The Supreme Court held that good faith was a complete defense in those instances where a seller was about to lose one of his customers. He could then discriminate in order to hold that customer. But under S. 719, as is made clear in the accompanying majority report, and as stated by the Senator from Maryland [Mr. O'CONOR], who reported the bill, good faith will be a complete defense for discriminations made not only to retain customers but to obtain them as well.

In the third place, S. 719 takes away private rights. Under the Robinson-Patman Act one who has been injured by price discriminations has the legal right to sue for triple damages. The Standard Oil of Indiana case was brought by a Government agency, the Federal Trade Commission, under section 2 of the Clayton Act, as amended by the Robinson-Patman Act. S. 719 goes beyond the Supreme Court decision in that it would make good faith a complete defense not only in cases brought by the Government under section 2 but also in private suits brought under other sections—4, 15, and 16—of the Clayton Act as amended by the Robinson-Patman Act. In view of a number of recent decisions in private suits, notably in the Russellville Canning Co. case, in which the courts have held that the plaintiff had been injured by price discrimination and was entitled to triple damages, this extention of the Supreme Court decision to cover private suits is a matter of great importance.

Finally—and this is a point which was not made by the Senate Small Business Committee, but which is discussed in the minority report—S. 719 goes beyond the Supreme Court decision in that it inverts the principle of good-faith defense. S. 719 presents the paradoxical and ironic situation that the mere fact of obedience to the law justifies an unlawful attack. Under S. 719 it is permissible to discriminate to meet a lawful price; that is to say, the mere fact that a small-business man is behaving lawfully—that is, selling his goods on a nondiscriminatory basis with the same price for everybody—justifies an unlawful discriminatory attack upon him. Had the small-business man been behaving unlawfully—that is, had he been selling his goods on a discriminatory basis—he could not be attacked under S. 719, since the bill permits discrimination only to meet a lawful price. That his obedience to the law should, in and of itself, automatically make him a clay pigeon for an unlawful discriminatory attack is fantastic.

Moreover, once he is attacked by an unlawful practice, the small-business

man cannot defend himself by using the same practice with which he was attacked; that is to say, if the small-business man were attacked by an unlawful price discrimination, he could not discriminate in self-defense, since S. 719 allows him to discriminate to meet only a lawful, not an unlawful, price.

Mr. President, at this point in the RECORD, I should like to have printed three paragraphs from the minority views on S. 719.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

In no previous statute has the prohibited conduct or method—which is the central object of the law—been excused on the ground that the method is used to attack others who are behaving in a lawful manner. On the contrary, the only normal ground upon which resort to a prohibited method may be justified is that it has been used in self-defense against an unlawful attack. Thus, in the criminal law, a person may not use a deadly weapon to attack others, but he may justify the use of such a weapon by showing that its use was in self-defense against attack with a like weapon.

The net result of this proviso would be to create a law which prohibits a harmful practice—discriminatory selling—and at the same time licenses the seller to ignore this prohibition wherever he finds that a competitor is observing them. On the other hand, it would deny to the competitor who is attacked under this license any right to use the prohibited method in self-defense.

If competition is to be encouraged, lawful price attacks must be encouraged. But lawful, i. e., nondiscriminatory, price reductions cannot be encouraged by a statute which permits those attacked by lawful means to retaliate with unlawful means. Good-faith violations of the law make sense only if they are violations committed in self-defense against an unlawful price attack. Consequently, if the good-faith proviso is to have any logical meaning, it must permit a seller to engage in discriminatory selling in self-defense against a discriminatory attack—at least until the law-enforcement agency can arrive on the scene and stop the unlawful attack. (82d Cong., 1st sess., Rept. No. 293, pt. 2.)

Mr. KEFAUVER. Mr. President, in summary I say that it is not the duty or obligation of Congress to affirm, in statutory law, each passing decision of the Supreme Court. I say that it is Congress, not the Supreme Court, which has the responsibility of determining what is sound national policy. Moreover, I say that the present bill, S. 179, goes beyond the Supreme Court decision in that it shifts the burden of proof, it permits discriminations not merely to retain but to obtain customers, it takes away private rights, and it inverts the principle of the good-faith defense.

Mr. President, I have other points which I could make in answer to the arguments made in favor of the bill, as summarized in the report of the Select Committee on Small Business. However, I believe I have consumed too much time already, and unless the Senator from Nevada [Mr. MCCARRAN], who is in charge of the time of the proponents of the bill, wishes to yield some time, I shall yield 15 minutes to the Senator from Alabama [Mr. HILL].

Mr. JOHNSON of Colorado. Is the Senator from Tennessee yielding the floor?

Mr. KEFAUVER. Yes, I am yielding the floor, but I believe it is necessary, under the unanimous-consent agreement, for me to yield time to any Senator who wishes to speak in opposition to the bill.

Mr. JOHNSON of Colorado. Is the time for debate limited and divided?

The PRESIDING OFFICER (Mr. HUNT in the chair). The Senator from Tennessee has that authority under the unanimous-consent agreement.

Mr. KEFAUVER. Of course, I only have the right to yield time to Senators who oppose the bill.

Mr. HILL. Mr. President, will the Senator from Tennessee yield 15 minutes to me?

Mr. KEFAUVER. Yes.

Let me inquire whether the Senator from Colorado wishes to present a matter which will require him to proceed at some length?

Mr. JOHNSON of Colorado. I wish to speak on the bill at some length, and in that connection I wish to refer to a certain advertisement.

Mr. KEFAUVER. I yield now to the Senator from Alabama [Mr. HILL], as I have promised I would.

Mr. JOHNSON of Colorado. Mr. President, will the Senator from Tennessee yield to me at this point and charge whatever time I take to the time which will later be allotted to me? I wish to call attention to an interesting advertisement which appeared in a Chicago newspaper by the Nashville Coal Co., Inc., of Nashville, Tenn.

Mr. KEFAUVER. I am sure it would be interesting.

Mr. JOHNSON of Colorado. I should like to use some time for that purpose at this point and have it charged to the time which I shall have later; or does the Senator wish to know something about Nashville?

Mr. KEFAUVER. Yes; I shall be very happy to know something about Nashville.

Mr. JOHNSON of Colorado. Very well.

Mr. President, I find advertisements very interesting, particularly with respect to their effect upon economic problems.

The following advertisement, which appeared in a Chicago newspaper, is by the Nashville Coal Co., which has an office in Chicago:

MACY'S, GIMBEL'S, AND US

The story of Nashville Coal is the story of America. It is the story of high and increasing productivity. It is emphasis on the basic truth in the coal business, or any other business, that when output per hour goes up price per unit goes down, and better things become available to more people. That is not price cutting; it is cost cutting through efficiency at work. It is cooperative teamwork of workers and management and employment of the most advanced productive methods and equipment. It is progress. It is enterprise. It is the true American economic system. It is the economic system on which we operate.

Low production costs and modern washers make our famous brands of high-test western Kentucky coal the biggest fuel bargains in the world.

Phone us your order now. We own and control actual capacity to produce more than 500 carloads of high-grade coal every day. Wholesale shippers of quality coals.

NASHVILLE COAL CO., INC.,
Nashville, Tenn.; Chicago; Muskegon; Davenport; Memphis; Paducah.

I wished to place that advertisement in the RECORD, and I wished to call it especially to the attention of the junior Senator from Tennessee.

Mr. KEFAUVER. Mr. President, I agree with every word of it. The proper way to proceed is to reduce costs by means of increased efficiency.

Mr. JOHNSON of Colorado. It seems to me that is the most eloquent statement I have heard in behalf of Senate bill 719. This company wishes to compete in distant markets, and it says that is the American system, that is the free-enterprise system, that is America. The short and eloquent advertisement I have just read covers the entire water front, so to speak, so far as the matters with which we are dealing at this time, in connection with the present debate on Senate bill 719, are concerned.

Mr. KEFAUVER. I should like to see the advertisement, if I may.

Mr. JOHNSON of Colorado. Certainly.

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. KEFAUVER. I yield.

Mr. DOUGLAS. With all respect to the eminent Senator from Colorado, is it not true, that the statement by the Nashville Coal Co., like the flowers that bloom in the spring, has nothing to do with the case? Is it not true that those of us who oppose this bill are not opposed to price reductions, but are in favor of price reductions which do not discriminate against independents? We also would allow price discriminations when they are justified by cost reductions. Nor would we oppose price discriminations which could not harm competition. But we are opposing unfair price discriminations—in other words, reductions given to some buyers but not given to other buyers, the effect of which is substantially to lessen competition. Our whole objection is to unfair price discrimination, not to price reduction; and, therefore, have not the sponsors of that advertisement completely misstated the issue?

Mr. KEFAUVER. I agree entirely with the Senator from Illinois. I see nothing in the statement by the Nashville Coal Co. which touches the pending issue at all. All of us are in favor of lower prices and increased productivity and efficiency at work.

I might point out to the distinguished Senator from Colorado that unless we had some protection to prevent cutthroat competition and the murder of small companies which are getting started, such as the Nashville Coal Co., no doubt—in other words, meeting their prices, but selling at a higher price to someone else, and violating the Robinson-Patman Act—it is very doubtful that the Nashville Coal Co. could have reached the point it has reached in the free-enterprise system of the State of Tennessee or of the Nation.

I think Mr. Snow, when testifying before the Small Business Committee, summarized the answer to the argument of

the Senator from Colorado very ably when he said:

> We think it is in the public interest that economic murder should not be inflicted upon the individual small-business men, even though the consumer might momentarily benefit from a lower price. He might benefit in his pocket from a lower price. He will pay back that lower price many times over when the competitive independent businessmen have been eliminated.

Now I yield 15 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 15 minutes.

Mr. HILL. Mr. President, I rise in opposition to the pending bill. I am very much opposed to it.

On April 26, 1948, the Supreme Court handed down its decision in *Federal Trade Commission* v. *Cement Institute* (333 U. S. 683). In that decision, insofar as the Federal Trade Commission Act is concerned, the Court affirmed the ruling of the Federal Trade Commission that the cement producers violated that act when they agreed among themselves to use a delivered price-multiple-basing-point system, the effect of which was complete suppression of all price competition in the sales of cement. That holding merely reaffirmed a well established principle, and is all the Supreme Court held in that case respecting the Federal Trade Commission Act. The opinion of the Court, however, contains dicta to the effect that conduct which falls short of being a violation of the Sherman Act may constitute an unfair method of competition prohibited by the Federal Trade Commission Act (p. 708) and that the existence of a combination is not an indispensible ingredient of an unfair method of competition under that act.

The Cement Institute decision also deals with section 2 of the Clayton Act. In respect to that act the Court again merely reaffirmed prior decisions—*Corn Products Co.* v. *Federal Trade Commission* (324 U. S. 726) and *Federal Trade Commission* v. *Staley Co.* (324 U. S. 746)—in holding that sales at delivered prices computed with reference to a basing point distant from the seller's factory may constitute an illegal price discrimination if the required detrimental effect on competition is present. The holding of the Court was merely that price differentials which resulted from adherence to the system could not be defended as having been made in good faith when in fact they were made as a result of agreement.

The ink was hardly dry on the Court's opinion, however, when a tremendous hue and cry arose from various members of "big business" asserting that these dicta set forth an interpretation of the Federal Trade Commission Act which would empower the Commission to outlaw freight absorption, or sales at delivered prices, by a seller acting independently. On the Clayton Act phase of the case it was asserted that some of the language used by the Court indicated that pricing differentials are illegal even in the absence of agreement and that as a practical matter the only safe method of pricing, in the face of this interpretation of the act, is to price on an f. o. b. mill basis.

Big business interests then began a series of pressure campaigns on the Congress to legalize "phantom freight," "basing-point systems," "rate-point systems" and other pricing practices not yet commercially identified, and, I suppose, even those not yet conceived.

Members of the Senate and Members of the House of Representatives, conscientiously concerned with the competitive welfare of all phases of business enterprise, fought valiantly every legislative effort to immunize these destructive pricing practices from the application of our antitrust laws. The Sherman Act, the Clayton Act, and the Federal Trade Commission Act are the backbone of the antitrust laws. They are the guardians of our economic freedom and of our economic liberty. They have been in effect a long time and have acquired specific content through interpretation by the courts. They provide safeguards against practices which would tend to destroy our free competitive economy. The Sherman Act has been described by none other than Chief Justice Charles Evans Hughes as "a charter of freedom" because it has "a generality and adaptability comparable to that found to be desirable in constitutional provisions"—*Sugar Institute, Inc.*, v. *United States* (297 U. S. 553, 600). It is directed against monopolies and conspiracies in restraint of trade. The Federal Trade Commission Act established an administrative agency with authority to prevent trade practices, which if not checked, would unduly suppress competition or tend to create a monopoly. The Clayton Act, as amended by the Robinson-Patman Act, prohibits a number of specific, injurious trade practices. In particular this law protects small enterprises against ruthless price discriminations. Such are the laws that the present legislative efforts would cripple, nullify, or even destroy.

One of these legislative efforts occurred in the last Congress, and in spite of a courageous fight by those members of the Congress who could see that the bill would emasculate the antitrust laws, it nearly became law. It was pushed through the House and Senate.

Mr. DOUGLAS. The cause of the country was saved through a very courageous veto by the President of the United States, was it not?

Mr. HILL. The Senator is entirely correct. Fortunately, as the Senator from Illinois says, the bill was vetoed by the President.

Mr. WHERRY. Mr. President, will the Senator from Alabama yield for a question?

Mr. HILL. I regret that I am unable to yield. I have but 15 minutes. Will the Senator withhold his question until I finish?

Mr. WHERRY. The Senator does not wish to yield, I take it.

Mr. HILL. I have but 15 minutes, I may say to my friend.

Mr. WHERRY. I did not know that the time was limited today. I thought we had all the time we wanted, so long as we divided it equally.

Mr. HILL. It is divided, but I may say to my distinguished friend, that many requests for time have been made by opponents of the bill, and therefore those who have charge of the time of opponents find it necessary to divide the time which they control. As I say, I have but 15 minutes.

Mr. WHERRY. There is no limit upon how long we may debate the bill today. It is difficult to remember questions. I merely had one or two questions which I thought would be of interest.

Mr. HILL. The bill which was vetoed was the one which the Federal Trade Commission said "will be seriously destructive—and will seriously weaken the Clayton Act"—letter, FTC to Senator KEFAUVER, dated January 18, 1950—and which the Department of Justice on three separate occasions said:

> We have never urged the necessity or desirability of legislation with respect to pricing practices to which the present bill is directed. (Hearings, serial No. 13, Subcommittee No. 1, Committee on the Judiciary, House of Representatives, June 8, 1949, on S. 1008, 81st Cong., p. 11; letter to Senator O'CONOR January 13, 1950; letter to Senator KEFAUVER dated April 13, 1950.)

The bill which was referred to in that quotation from the Department of Justice was the bill passed in the last Congress, which the President vetoed.

The bill which is now before the Senate is another attempt to legalize destructive pricing practices. Here, however, the proponents of these practices cleverly try to use as a vehicle a recent majority opinion of the Supreme Court—*Standard Oil Co.* v. *Federal Trade Commission* (340 U. S. 231). During the last Congress they could not wait for the decision in the case. Now they say the majority opinion should be written into law. Why do they want the majority opinion enacted? Does that not amount to a legislative expression of lack of confidence in the ultimate competency of the Supreme Court? And, after all, the majority opinion reflects one of the provisions of the legislative enactments the proponents of the legislation were seeking in the last Congress. One look at the bill will tell you why, what they have in mind, and why they want it enacted.

First of all, this bill would add a new subsection identified as "(g)" to section 2 of the Clayton Act. It is a "G–2" section. Yet, this bill is alleged to be merely a re-affirmation of the majority opinion, which, in reality, is the Court's interpretation of the meaning of an existing subsection, subsection (b). Thus, according to the proponents of the bill, subsection (g), if enacted into law, would be merely the Supreme Court's interpretation of subsection (b).

What an innocuous and anomalous way of drafting legislation. In reading the existing and the proposed subsection, one can see that they are quite different in phraseology. Is this an example of legislative clarification? One wonders what, other than ambiguity and confusion, the proponents had in mind. Could it be that they feared the American people's wrath at efforts to tamper with existing antitrust laws? Surely they do not believe that the American people are

so naive as not to be aware of the fact that one can detract from by adding to just as easily as he can by subtracting from. Perhaps they believe that such an approach will lessen the news value of what is taking place, or that it might weaken the argument of the opposition.

Had they so desired they could have relied on the majority opinion itself, or they could have suggested a few technical amendments to the existing subsection 2 (b) which would have reaffirmed the doctrine of the majority opinion.

Yet if one takes a second look at the bill their motive and their purposes in creating this new subsection become even more clear. They go far beyond the majority opinion. They write new Clayton Act procedural laws for the courts and the Federal Trade Commission, and would limit existing evidentiary standards respecting personal conduct.

Under the existing subsection 2 (b), good faith meeting of a competitor's lower price is an affirmative defense that must be proved by the one asserting it. The language "unless the justification can be affirmatively shown," in subsection 2 (b), is noticeably missing from the language proposed for subsection (g). Assuming that subsection 2 (b) will be controlling, although I am not sufficiently gifted to prophesy judicial determinations concerning the dependent status of the two subsections, it would appear that the burden would shift to the Commission to prove that the defendant acted in bad faith. Obviously, this changes existing procedural regulations, makes the Commission case the more difficult to prove, and is thereby an invitation to drive the little fellow out of business.

In another respect the bill goes far beyond the majority opinion in the Standard Oil case. The majority opinion clearly states that the defense is available providing the seller proves he acted in good faith to meet a lawful and equally low price of a competitor. It will be noted that the word "lawful" does not appear in the language of the bill which establishes the defense. It appears to have been inserted, not as an afterthought, but intentionally, in the proviso. The reason is obvious. Under the language of the bill the determining factor is not whether the price the seller met is unlawful, but whether or not the seller knew, or should have known, of its unlawfulness, which is something quite less than the criteria established in the majority opinion.

Furthermore, by placing in the proviso this so-called qualification on the defense of good faith, the burden of proof respecting the lawfulness or unlawfulness of the price the seller met is for all practical purposes shifted from the seller to the Federal Trade Commission.

Mr. President, one can easily see what an impossible task is thereby placed upon the Commission. If the defense of good faith were to be asserted, the Commission would first have to prove that the price was unlawful. This necessitates proving a violation or violations of the antitrust laws independent of the violation which initiated the proceeding. Let us assume that A is charged with a price discrimination. He asserts the good faith defense, alleging that he lowered his price in order to meet the lower price of his competitor, B. The Commission conducts an independent investigation and determines that B's price is unlawful, that it results in a price discrimination. B then states that he lowered his price to meet that of his competitor, C. Suppose C's price is a discriminating price, but it was lowered in order to meet that of his competitor, D. On and on it goes, and the Commission's enforcement responsibilities have become impossible.

Instead of requiring the seller to determine and prove the lawfulness of the competitor's lower price as the majority opinion requires, the bill would place the burden on the Commission and then excuse the seller, even though the price was unlawful, if the Commission could not prove that the seller knew or should have known of the unlawfulness of the price. Hence, we have an even more encouraging invitation to drive the little fellow out of business.

But even more devastating in its effect on antitrust enforcement is the clever manner in which the bill is drawn. Immediately after the language spelling out the good faith defense there is inserted a colon, and a proviso, which states that the seller shall not have been deemed as acting in good faith if he knew or should have known that the lower price or more extensive services or facilities which he met were unlawful.

What does this do to proof of good faith? It is clear that it limits the scope, quantum, and character of the evidence ordinarily necessary to prove that the seller acted in good faith. It means that the lawfulness or unlawfulness of the price he met is the only criterion which may endanger his defense.

Let us take an example: Suppose X had three customers, A, B, and C. B, the largest buyer of the three, went to X and said, "Y is offering to sell to me at a lower price than you are." X then determines that he will meet Y's price, but he does not want to suffer a loss, so he raises his price to A and C who are not customers of Y. Since the lawfulness of Y's price is the only determining factor, and we will assume that it is lawful, X will be deemed to have acted in good faith, although he raised his price to A and C and thereby increased the differential between his prices to them and B. And at the same time there would be another invitation to destroy the little fellow.

The PRESIDING OFFICER. The time of the Senator from Alabama has expired.

Mr. DOUGLAS. Mr. President, I yield five additional minutes to the Senator from Alabama.

Mr. HILL. Mr. President, this bill is really the epitome of the proponents' attempts to emasculate the antitrust laws. It is stated to be merely the reaffirmation of the majority opinion in the Standard Oil case. Yet we have seen that it will make substantive and procedural changes in the Clayton Act, and the Federal Trade Commission Act, and will weaken the "charter of freedom," the Sherman Act. Over in the House there is a bill which is the counterpart of the pending bill, which would go even further in getting away from the generality and adaptability which Chief Justice Hughes found so desirable. In addition to amending the Clayton Act, it would amend the Federal Trade Commission Act, and would define the term "price" as used in the Clayton Act.

Mr. Justice Brandeis, in *Federal Trade Commission* v. *Gratz* (253 U. S. 421, 436), warned against inserting definitions in the antitrust laws. He said:

> Instead of undertaking to define what practices should be deemed unfair, as had been done in earlier legislation, the act [Federal Trade Commission Act] left the determination to the Commission. Experience with existing laws had taught that definition, being necessarily rigid, would prove embarrassing and, if rigorously applied, might involve hardship. Methods of competition which would be unfair in one industry, under certain circumstances, might, where adopted in another industry, or even in the same industry under different circumstances, be entirely unobjectionable. Furthermore, an enumeration, however, comprehensive, of existing methods of unfair competition must necessarily soon prove incomplete, as with new conditions constantly arising, novel unfair methods would be devised and developed.

It is obvious that no matter how commercially accurate a definition of price might be, it nevertheless has no place in the antitrust laws. Price is a subject of factual determination. The courts should be the agency to determine what the real or true price is, not the Legislature. But the proponents want "price" defined; defining "services" will be the next step; defining "facilities" will be the next step; until eventually the antitrust laws will be most likely identified as the antitrust code, and will offer as many gaps, loopholes, problems of interpretation, conflicts, and judicial passiveness as the Internal Revenue Code.

Thus far my discussion has been confined to the extent to which the language of the bill itself goes beyond the decision in the Standard Oil case. Now let us take a look at the majority report. There we find language which further discloses the proof of my allegations that this bill is an attempt to rewrite and virtually wipe out the antitrust laws. I refer Senators to the following language to be found on page 6 of the majority report:

> Whenever several sellers are charged with a conspiracy to fix prices, evidence alone does not prove, however, that the identical prices resulted from a conspiracy to fix prices. * * * The period of time during which, and the rigidity with which, sellers have sold at like prices also is admissible evidence under a charge of conspiracy. Here again such evidence alone does not prove, and no adverse inference may be drawn, from the frequency or regularity with which a seller meets or offers to meet his competitor's lower prices.

Note the language, "no adverse inference may be drawn from the frequency or regularity with which a seller meets or offers to meet his competitor's lower prices." That is significant language, Mr. President.

This may well amount to an instruction to the Federal courts that they may no longer use a judicial doctrine

which has prevailed since conspiracy became a crime and since contracts and agreements necessitated court interpretation. The courts have consistently held that no formal agreement is necessary to constitute an unlawful conspiracy. Almost always a crime is a matter of inference, deduced from the acts of the person accused which are done in pursuance of an apparent criminal purpose—*Stack* v. *United States* (27 Fed. 2d 16).

Often, if not generally, direct proof of a criminal conspiracy is not available, and the common purpose and plan are disclosed only by a development and collocation of circumstances—*Glasser* v. *United States* (315 U. S. 60).

Violations of the antitrust laws, primarily because of the ingenuity and "intelligence," if I may use that word, of those who violate them, are often difficult to prove because the violation resulted from a telephone call, a conference where no minutes were kept, or because documentary evidence which would prove the violation were systematically and regularly destroyed.

The PRESIDING OFFICER. The time of the Senator from Alabama has expired.

Mr. DOUGLAS. Mr. President, I yield five additional minutes to the Senator from Alabama.

Mr. HILL. The Supreme Court more than 30 years ago stated:

> It is settled that the essential agreement, combination, and conspiracy in violation of the Sherman Act, may be implied from, or found in a course of dealing or other circumstances, as well as from an exchange of words. (*United States* v. *Schrader's Sons*, (252 U. S. 85).)

This statement was repeated in *United States* v. *Pullman Company* (50 F. Supp. 123) and *American Tobacco Company* v. *United States* (147 Fed. 2d 93, 107).

From *Milk & Ice Cream Can Institute* v. *Federal Trade Commission* (152 F. 2d 478) and *Fort Howard Paper Company* v. *Federal Trade Commission* (156 Fed. 2d 899) comes this language:

> Price uniformity, especially if accompanied by an artificial price level not related to supply and demand, may be evidence from which an agreement or understanding or some concerted action of sellers operating to restrain commerce may be inferred.

The language of the majority report would deprive the Commission and the Attorney General of their only avenue of approach when the formal agreement is not available to be produced as evidence. This would very effectively eliminate any antitrust law enforcibility.

Many far-reaching antitrust cases, were they to be brought under the burden of this bill and the majority report, would be lost by the Government. A list of antitrust cases wherein the violation had to be inferred would be extremely lengthy. However, I should like to refer to a few of the more recent of such cases, namely, the Consumers Institute case, supra; *Interstate Circuit* v. *United States* (306 U. S. 208); and the *Rigid Steel Conduit case* (168 Fed. 2d. 175).

Mr. President, we have seen how far the majority report takes the bill. The proponents would legalize that which is now unlawful, and would make it impossible to prove the unlawfulness of what little they would leave unlawful.

The bill provides a way of returning to the old basing point. I might add that no people in our whole country have suffered more from the basing point system than the people of Louisiana, Alabama, and other Southern and Western States.

The proponents would nationalize a pricing system which accomplishes for their purposes what a basing point system formerly accomplished. They might just as well repeal the Sherman Act, the Clayton Act, the Federal Trade Commission Act, and all the rest of the antitrust laws.

Instead of protecting big business and letting the little fellow suffer as this bill and the Supreme Court majority opinion do, we should be devoting our legislative efforts toward the solution of the problem of the sufferer, not the enhancement of the power of the one who causes the suffering.

At this very time in the same committee which reported this promonopoly piece of legislation—the Senate Committee on the Judiciary—there is a bill (H. R. 2401) which would increase the penalties under the Sherman Act. This bill is so noncontroversial in nature that it had the unanimous approval of all the members of the House Committee on the Judiciary and was unanimously passed by the House of Representatives on April 17. It was considered so urgent that it was passed by the House 7 days after it was reported. Yet it looks as if it will receive the same death sentence by the same committee as was imposed on an identical bill, H. R. 7827, Eighty-first Congress, which was passed by the House June 5, 1950. That is the bill, as Senators know, to increase the penalties under the Sherman Act.

Why are we not permitted to be devoting our legislative efforts to strengthening the antitrust laws instead of tearing them apart? Why are we being forced to fight against a legislative invitation to monopoly instead of supporting and enacting a bill which would serve as a powerful deterrent to that monopoly?

Mr. President, the antitrust laws must be permitted to continue as the guardians of our economic freedoms. The generality of the statutes which govern antitrust problems must be retained. This policy has been advocated and executed by the Congress and the courts for over 60 years. It permits the adaptation of the law to continually changing practices and methods. In the Sherman Act and the Federal Trade Commission Act the offense is specified but it is not spelled in detail. They are, however, sufficiently flexible to meet the demands for justice under changing circumstances. Restraints of trade, discriminations among purchasers, and unfair trade practices, alter in magnitude and character just as industry undergoes changes in organization, structure, and marketing techniques.

Every time the Government catches up with the promonopolists they come yelling to Congress to get bailed out. They do it under the guise of asking for legislation for clarification, alleging the court's decisions create confusion and chaos. When one looks at what they recommended in the way of legislation to clarify the situation he discovers that clarification to them means one thing, and one thing only—immunization.

The PRESIDING OFFICER (Mr. PASTORE in the chair). The time of the Senator has expired.

Mr. HILL. Mr. President, in closing I want to leave this thought with Senators, the representatives of the people whom these laws were designed to protect. Can Senators in good conscience enact into public law a bill which, in and of itself, is a knock-out punch to small business enterprise?

Mr. WHERRY. Mr. President, let us have an understanding as to the time. If the Senator from Alabama is to proceed further, there should be an additional allotment of time made to him.

The PRESIDING OFFICER. The Senator from Alabama has concluded his statement.

Mr. JOHNSON of Colorado. Mr. President, will the Senator from Nebraska yield me 30 minutes in which to discuss the subject now under consideration?

Mr. WHERRY. Yes; I yield 30 minutes to the Senator from Colorado.

Mr. BRICKER rose.

Mr. JOHNSON of Colorado. Mr. President, I yield to the Senator from Ohio if he wishes to insert something in the RECORD.

Mr. BRICKER. No, I should like to have 10 or 15 minutes to speak on the same subject.

Mr. JOHNSON of Colorado. Mr. President, I have been waiting for quite a while for an opportunity to speak.

The issue raised by Senate bill 719 is simply whether we are for or against competition. It is that simple, Mr. President. Of course, everyone claims to be in favor of competition. But, we cannot with any sense of propriety tell consumers that we believe in competition and at the same time prohibit businessmen from engaging in normal bona fide competition. The business conduct which is permitted by this bill is merely, and no more than, normal bona fide competition. Objections to the bill are based upon the premise that bona fide competition is bad whenever it may hurt some businessman. Of course, we can not have competition without the possibility of some businessmen being hurt. Therefore, the argument against the bill is in substance that we must prohibit competition in order to protect some of the competitors.

WHAT THE BILL DOES

Senate bill 719 provides that it shall be a full defense to a charge of price discrimination for a seller to show that he lowered his price in good faith to meet the equally low price of a competitor. The seller has the burden of affirmatively showing that he made his price in good faith to meet the competitor's lower price.

WHAT THE SUPREME COURT HELD IN THE STANDARD OIL CASE

The Supreme Court expressed its faith in a competitive economy when it sustained the right of a seller to engage in good faith competition. The Court's decision is summarized in its conclusion

that "the heart of our national economic policy long has been faith in the value of competition."

In the recent Standard Oil case—*Standard Oil Co.* v. *Federal Trade Commission* (340 U. S. 231)—the Supreme Court majority held that section 2 of the Clayton Act, as amended by the Robinson-Patman Act, now makes the meeting of a competitor's equally low price a full defense to a charge of price discrimination. The pending bill would conform the statutory language to the interpretation which the majority of the Supreme Court has given the present law.

The court majority described the good faith defense, in the present statute, by saying that it "consists of the provision that whenever a lawful lower price of a competitor threatens to deprive a seller of a customer, the seller, to retain that customer, may in good faith meet that lower price." The court followed that statement with the observation that "actual competition, at least in this essential form, is thus preserved."

Since the construction to be given the existing statute depended on the intent of Congress, both the majority and the minority opinions of the Court discussed what Congress intended to accomplish by the Sherman and Clayton Acts, as well as in the Robinson-Patman Act. The majority came to the conclusion that, "Congress was dealing with competition, which it sought to protect, and monopoly which it sought to prevent."

The significant part of the minority opinion, which sustained the Federal Trade Commission's construction of the statute, is their finding that "nondiscriminatory pricing tends to weaken competition in that a seller, while otherwise maintaining his prices, cannot meet his antagonist's price to get a single order or customer."

The Supreme Court Justices were not unanimous as to how the case should be decided, but they were unanimous in the belief that competition was weakened by denying a seller the right in good faith to meet his competitor's lower price. I want the opponents of the bill to face that issue squarely. The minority attributed to the Congress an intention thus to weaken competition. The majority attributed to the Congress an intent to protect competition and to prohibit only monopoly.

The Court described the Commission's construction of the present law by saying:

> The proviso in section 2 (b), as interpreted by the Commission, would not be available when there was or might be an injury to competition at a resale level. So interpreted, the proviso would have such little, if any, applicability as to be practically meaningless. We may, therefore, conclude that Congress meant to permit the natural consequences to follow the seller's action in meeting in good faith a lawful and equally low price of its competitor.

The Court rejected the Commission's construction on the ground that—

> It is enough to say that Congress did not seek by the Robinson-Patman Act either to abolish competition or so radically to curtail it that a seller would have no substantial right of self-defense against a price raid by a competitor.

The Federal Trade Commission, by a vote of 3 to 2, now urges the Congress to amend the law to deny this right to a seller whenever it may result in an injury to competition. This is precisely the argument which the Commission made to the Supreme Court. And the Supreme Court has rightly said that such a provision would have "such little, if any, applicability, as to be practically meaningless."

The Commission majority, as I see it, would like the Congress to create a cushion to insulate businessmen against the effects of vigorous, but fair, competition. The Commission wants to establish a feather bed to protect some of the participants in the contest for trade against the more successful competition of their business rivals. But such conduct is prohibited by the Sherman Act, and even the Commission should know it is not in the public interest. Chairman Mead gets on both sides of this question of competition at times.

Mr. LONG. Mr. President, will the Senator yield for a question?

The PRESIDING OFFICER (Mr. HOLLAND in the chair). Does the Senator from Colorado yield to the Senator from Louisiana?

Mr. JOHNSON of Colorado. No. My time is limited, and I shall have to proceed.

Administrative agencies generally display their most attractive ideas, exhibit their most popular philosophies, and wear their most virtuous hats, before Appropriation Committees.

On February 15, 1951, the Chairman of the Federal Trade Commission appeared before the House Committee on Appropriations to tell of the important work the Commission is doing.

Chairman Mead, wearing the hat of an advocate for an increased appropriation, then said:

> The great weapon of the United States is its high level of productivity, and the productive records set by American industry are very largely due to the fact that the competitive spirit has been kept more vigorous here than elsewhere. We tend to forget this, but foreign observers see it clearly. For example, a team of British steel founders who came here to study American methods in 1948 attributed our high productivity to competition. Here is what they said.

Then Chairman Mead quoted from the report of those Britishers that—

> Throughout American industry competition is a governing factor. * * * Each is driven by competition to conduct his business in the way by which his products can be produced and marketed in the least costly manner.

But obviously in that type of competitive contest many of the less efficient people are injured. But on this occasion Chairman Mead throws out his chest and says this sort of competition makes America great. Of course, the Chairman is correct. Competition, which is the heart and the soul of the free enterprise system, has made the United States the greatest producing nation of all history.

Continuing that testimony before the House Appropriations Committee, Chairman Mead quoted from the report of some British accountants that—

> American management's perception of the need for high productivity at low cost is sharpened by the knowledge of the penalty of failure, possible loss of business to competitors and ultimate bankruptcy. Not for it the soft cushion and comfortable featherbeds of price agreements and quotas, with the feathers often concealed from the public under an attractive cover of what was called in the past nationalization.

Then Chairman Mead added these profound words:

> If we just recall what is happening in Britain, where they have been governed by this soft economy, where competition has been something gentlemen do not practice, I think we will realize that it is the competitive spirit that has really made America superior to all countries of the world.

That is a powerful statement. If only the Commission would be consistent and practice what it knows is the foundation upon which a competitive economy must be built, none of us would be here today. This bill would not be before the Senate. These arguments would not be necessary.

How can we have competition if we tell businessmen that they cannot in good faith meet the lower prices which their competitors are lawfully offering to their customers? Of course we cannot. It simply does not make sense for anyone to claim that that is not the situation.

THE NEED FOR THIS LEGISLATION

As this bill would do no more than conform the statute to the Supreme Court's interpretation of present law, many Senators have asked the need for this legislation. That is a good question. The Supreme Court has interpreted the law. By a majority of 5 to 3, with one Justice not participating, it has said what the law is. That means the law which has been in effect for 15 years. We are not changing the law. The Supreme Court did not change the law. It could not do so. It simply interpreted the law. So why do we need legislation at this point? Those who support this legislation were satisfied to accept the Supreme Court decision, although it did not go as far as prior legislation on the subject. It was the opposition who were unwilling to accept that decision.

The Supreme Court had no sooner announced its decision in the Standard Oil case than the Federal Trade Commission people started saying that they had just begun to fight. Through public statements and its conduct in litigated cases, the Commission made clear that it did not intend to accept the Court's decision. In the view of those of us who support this legislation, the Commission's attitude made it necessary that the statute be amended to back up the Supreme Court. Businessmen in relatively sparsely populated areas who must market their products in distant markets to live were frightened and upset by the belligerent attitude of the Commission, which is supposed to be the umpire in trade matters.

The record conclusively sustains their worst fears. The Commission now urges that the Congress should overrule the Supreme Court decision. The minority report of the Senate Judiciary Committee, filed by those opposing this legislation last year, also urges that the Congress overrule the Supreme Court.

The Court decision was by vote of 5 to 3. Significantly, as I have shown, the minority justices did not contend that the Federal Trade Commission's construction of the law was desirable. They never made any such contention. They based their views wholly upon what they considered to be the legislative intent when the Robinson-Patman Act was enacted. That was the whole question in the Supreme Court when this subject was considered. What was the legislative intent? Five of the Justices said it was one thing. Three of the Justices said they thought it was something else. With the Commission unwilling to accept the decision of the majority, and three members of the Court believing that Congress had intended to adopt the Commission's view, it is desirable for the Congress to restate the statute in such language as clearly expresses what Congress intends and what the Supreme Court majority finds to be the existing law.

The need for this legislation goes deeper than the Commission's mere unwillingness to accept this decision. Unfortunately, the Federal Trade Commission and the Attorney General each have concurrent jurisdiction to enforce the antitrust laws.

It is unfortunate that we have two agencies enforcing the antitrust laws; and when we find those two agencies in conflict over the administration of their separate jurisdictions, it becomes a very serious matter. The Supreme Court has held that a violation of the Sherman Act is also an unfair method of competition in violation of the Federal Trade Commission Act. The Commission and the Attorney General are both expressly authorized to enforce the Clayton Act. Thus two different agencies enforce the same laws against the same people. This situation is chaotic in view of the fact that each agency has a different view as to what competitive conduct should be required by the antitrust laws.

The Attorney General urges vigorous competition, and under the Sherman Act he requires businessmen to compete even though their doing so may cause an injury to some of them. The Commission on the other hand prohibits competition whenever it may cause an injury to someone.

Some day the Congress may eliminate this confusion by giving exclusive antitrust jurisdiction to either the Commission or to the Attorney General. Until that happens, Congress should make known whether it supports the Attorney General and the Supreme Court in their requirement that businessmen compete with each other, or whether it supports the Federal Trade Commission in its campaign to prohibit competition whenever it might injure someone. I repeat Mr. President, that you cannot have competition which does not injure some one. When a person engages in business he expects to get his share of the trade even though some other businessman may think that all of the prospective business should belong to him.

Another thing, the Federal Trade Commission apparently has no intention of expeditiously disposing of its pending cases to clarify this conflict in the requirements of the antitrust laws. Almost a year ago I asked the Commission what cases it had pending in this field. It advised me that 6 cases were pending which would be decided in a few months. Almost a year has elapsed. The Commission has not decided a single one of these cases, although it has settled three of those cases by consent of the businessmen. Of those that are still pending, one is 5 years old and another is 8 years old. There are other Commission antitrust cases that have been pending for as long as 12 years. This is no way to administer the antitrust laws.

Under the Legislative Reorganization Act, the Committee on Interstate and Foreign Commerce has the responsibility for legislative supervision over this Commission. Last fall our committee held hearings in an effort to help clarify this situation. The Commission, insisted, however, that it could not advise us when businessmen could absorb freight or sell at delivered prices, but that each case could be decided only after litigation involving the particular facts in the particular case.

How can industry expend large sums of capital in developing a productive capacity when the Federal Trade Commission sits back and says, "We will wait until something happens, and then we will decide the case on its merits. We will not give you any general advice to guide you or to help you. We will not assist you in that way. We will sit back and watch you. If something happens which we think violates the law, we will crack down on you. We are not going to tell you beforehand how you can escape our sledge hammer."

The Commission's conduct on S. 1008 further indicates to me insincerity. That bill was drafted at the Federal Trade Commission by members of its staff at the request of the senior Senator from Wyoming [Mr. O'MAHONEY]. Yet the same people at the same Commission who drafted that bill later urged that it be vetoed by the President on the grounds that its language was confusing. They ought to know. They wrote the bill.

The record shows that the Federal Trade Commission does not intend to administer the laws as interpreted by the Supreme Court. Whenever an agency refuses to accept the Supreme Court's interpretation of a statute, particularly when that interpretation is clearly in accord with the wishes of the Congress, the Congress is compelled to express its desire once again in even plainer language. Hence, S. 719.

I am sorry that the senior Senator from Illinois [Mr. DOUGLAS] is not now on the Senate floor, because I should like to pay him a well-earned tribute. Just the other day he made a potent observation. I wonder if he realizes the full extent to which his observation applies to the Federal Trade Commission and its handling of bills to permit competition to work. In support of an amendment to cut the appropriation for the Office of the Solicitor in the Department of Labor, the able Senator from Illinois [Mr. DOUGLAS], made a very fine statement, which appears at page 6294 of the CONGRESSIONAL RECORD of June 8, 1951. I read what the Senator said:

> Mr. President, I submit that on the whole, the legal staffs of the Government are swollen and inflated. If there is one commodity of which the Government has a surplus, it is lawyers. Virtually every agency has a large number of lawyers, a large percentage of whom are not needed. I know that statement comes hard in a body the majority of whose Members are lawyers; but the function of these lawyers generally is to tell the head of the agency that he can legally do what he wants to do, that there is legal ground for proceeding in the way he wants to proceed. If the head of the agency wants to deny jurisdiction and does not wish to take up a subject, lo and behold, the lawyer in his agency will produce an opinion showing that it is either unconstitutional or illegal to take the matter up. If the head of the agency wants to assume jurisdiction, an opinion will be produced showing that there is a sound constitutional or legal basis for his doing so.

Then the Senator from Illinois reached a conclusion which is directly applicable to the pending measure. He said:

> We have progressed to the point where it is not the Congress which really makes the laws of the country. It is the heads of the agencies who interpret the laws and get from their paid attorneys opinions which in some cases are in violation of the statute, and in many cases do not carry out the intent of the statute.

When the Senate Judiciary Committee asked the Federal Trade Commission for its views on the pending bill, the Commission referred the request to its general counsel. On February 12, 1951, the general counsel gave the Commission a report which said in part:

> The substance of the decision of the Supreme Court in the Standard Oil case is that the Court has said the law is what the Commission said it thought the law should be.

That was his opinion in support of S. 719 and the decision of the Supreme Court. He attached to his report a proposed letter for Chairman Mead to send to the Judiciary Committee which said:

> In view of our understanding of the provisions of S. 719 and our understanding of existing law respecting the "good faith" defense, as interpreted by the Supreme Court in Standard Oil Company of Indiana against FTC, the Commission sees no objection to incorporating this defense in the statute.

The report was short, clear, and to the point. It approved S. 719. I ask unanimous consent that a copy of the report be included in the RECORD as a part of my remarks.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

> Memorandum for the Commission in re S. 719, Eighty-second Congress, first session.
>
> Transmitted herewith is draft of proposed reply to the request of the Committee on the Judiciary of the Senate for report upon S. 719, Eighty-second Congress, first session.

The purpose of this proposed legislation might be better carried out from a technical standpoint by a change in language in section 2 (b) of the Clayton Act. This is not suggested, however, for the reason that it might readily result in other and more important changes in that section being made during the consideration of a specific change suggested.

The Commission recognizes, of course, that in deciding the Standard Oil case the Supreme Court sought to limit its decision to the case before it where the lower prices of Standard Oil were made in order to retain customers. It appears to have left open some question as to the result where a seller meets the lower price of a competitor in an effort to secure new customers. The proposed bill covers both of these aspects without making any distinction between them. I do not mean to infer that it is very likely that a different result could be obtained in the Supreme Court if the discriminations involved were made in good faith to meet the equally low prices of a competitor in order to obtain new customers, nor that an attempt to secure such a distinction would be desirable. As a matter of fact, the elements involved in such a case of seeking new customers may better be left for consideration in interpreting and applying the good-faith limitation to the facts in the case and to an effort to secure a flexible construction of that phrase.

The Commission will recall that during the consideration of S. 1008 by the last Congress the Department of Justice advocated the position that good faith in meeting the lower price of a competitor should be a defense. The last public statement of the Commission upon this point was to the effect that while it thought the law was otherwise, on balance it believed that good faith should be a defense. There has been no subsequent statement by the Commission as now composed contrary to the public statement mentioned. The substance of the decision of the Supreme Court in the Standard Oil case is that the Court has said the law is what the Commission said it thought the law should be.

Taking into account the practicalities of the situation, it is my belief that no extended discussion of the proposed legislation is desirable. The accompanying draft of report is quite brief. Additional copies of this draft are attached for reference of the matter to the Bureau of the Budget, if the Commission approves the report.

Respectfully submitted.

W. T. KELLEY,
General Counsel.

FEBRUARY 12, 1951.

HON. PAT MCCARRAN,
Chairman, Committee on the Judiciary, United States Senate, Washington, D. C.

MY DEAR SENATOR MCCARRAN: This is in response to your request for a statement of the views of this Commission concerning S. 719, Eighty-second Congress, first session.

This bill proposes to amend section 2 of the Clayton Act, as amended, by adding at the end thereof a new subsection, the effect of which would be to write into the statute specific provision that the establishment by a seller of "good faith" in meeting the equally low price or equally extensive services or facilities of a competitor shall be a complete defense to charges of discrimination in price or services or facilities. Apparently the proviso contained in the proposed new subsection does not operate to limit or restrict the meaning of the phrase "in good faith" contained in the body of the subsection.

In view of our understanding of the provisions of S. 719 and our understanding of existing law respecting the "good faith" defense, as interpreted by the Supreme Court in *Standard Oil Company of Indiana* v. *Federal Trade Commission* (340 U. S. 231), the Commission sees no objection to incorporating this defense in the statute.

By direction of the Commission:

Sincerely yours,

JAS. M. MEAD, *Chairman.*

Mr. JOHNSON of Colorado. Mr. President, let us see what happened and how correct the Senator from Illinois was. Three of the five members of the Federal Trade Commission decided to oppose this bill, so they had their hired lawyers write them an opinion that it was a bad bill. To do so they had to twist the law, the facts, and the economics, but they came up with the desired opinion.

A majority of the heads of that agency did not like the general counsel's report. So their accommodating general counsel wrote them a new and directly contrary report, which was more to their liking, just as the Senator from Illinois said he would do.

On March 1, 1951, the same general counsel wrote for his agency heads a long memorandum. It starts out by saying that in view of the wide difference of opinion, he was submitting another report. Who entertained this difference of opinion? Obviously his bosses. This time the hired counsel not only urged that the bill be rejected but he asked that the recent Supreme Court decision be legislatively reversed. He went all the way this time.

I ask unanimous consent that a copy of that opinion be printed in the RECORD at this point to prove the correctness of the keen observation of the Senator from Illinois.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

Memorandum for the Commission.

A few days ago I submitted for the consideration of the Commission a report on S. 719. It may be that the Commission will agree with the substance of this report. This matter is of great importance. It involves a judgment other than legal questions and in view of the wide differences of opinion by very able people it is with some reluctance that I offer any firm judgment in the matter. I am submitting for the consideration of the Commission another report on S. 719. This differs from the former report. It reflects my best sincere judgment. I am accompanying this report on S. 719 with a separate memorandum addressed to the Commission in which I have set down as best I can the reasons why I feel that Congress should not only reject S. 719 but amend section 2 (a) of the Clayton Act so as to remove the construction placed upon the section 2 (b) proviso by the Supreme Court. In view of the importance of this matter and the varying views respecting same, I suggest that it might be advisable for the Commission to discuss the matter with Messrs. Edwards, Dawkins, Sheehy, MacIntyre and Wright, who from their long study of the matter are, in my opinion, expertly qualified.

Respectfully submitted.

W. T. KELLEY,
General Counsel.

MARCH 1, 1951.

Memorandum for the Commission.

There has been submitted by another memorandum a report on S. 719. This memorandum is merely to give the Commission the benefit of some comments of my own on S. 719.

The Supreme Court in the Standard Oil of California case held that the good faith proviso in section 2 (a) of the Robinson-Patman Act amendment of the Clayton Act was not procedural but a substantive defense.

Section 2 (a) of the Clayton Act as amended by the Robinson-Patman Act, as indicated by the reports of the committees, was designed primarily to protect purchasers against price discrimination which tended toward monopoly—to prevent the seller of an article from giving a price preference to favored buyers so as to enable them to obtain an unfair competitive advantage over their rivals. The result of the enactment of 2 (a) is that prima facie any discrimination is unlawful which tends toward restraint of trade or monopoly, whether it threatens this result by injury to the business of the buyers' competitors, or the sellers, or in any other manner. But this discrimination may be justified by proof that it comes within the expressed exception which reads:

"*Provided,* That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered.

* * * * *

"*Provided, however,* That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor."

Insofar as section 2 (a) makes unlawful price discrimination by a seller in order to injure a competing seller, it merely describes specifically a method of competition which is unlawful within the meaning of section 5 of the Federal Trade Commission Act and the Sherman law when used for monopolizing purposes.

In this aspect the policy back of section 2 (a) is the policy of the Sherman law. Insofar as section 2 (a) prevents price discrimination by a seller in such a way as to give the favored buyer a competitive advantage, the policy is not that underlying the Sherman Act but rather that of the discrimination sections of the Interstate Commerce Act.

It is well known that the policy back of those sections was to prevent a railroad from giving special rates to favored shippers and thus enabling them to undersell their competitors and to obtain a monopoly. Methods such as these were supposed to have been largely responsible for the growth of the Standard Oil trust. The Interstate Commerce Act went further than section 2 (a) since it forbade discrimination even where it could not be proved that its effect may be to substantially lessen competition or that its tendency was to create a monopoly. While under section 2 (a) this effect or tendency must be shown, yet the purpose was in each case the same though the remedy was in one case made more drastic than in the other. The sections differ also in that the Interstate Commerce Act has no expressed exceptions, the act merely making different rates for a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions unlawful. These general terms embody all reasonable and relevant exceptions of the kind expressly included in the first proviso of section 2 (a) of the Robinson-Patman amendment.

Section 2 of the original Clayton Act went further than the Interstate Commerce Act. The Clayton Act section forbade discrimination where the effect may be to substantially lessen competition or tend to create a monopoly. This, however, was qualified by a proviso permitting discrimination in price in the same or different communities made in good faith to meet competition. The meaning of this proviso is most uncertain. It seems to me what Congress had in mind is this: If a concern starts a campaign of price cutting in a particular community to a particular customer or customers in violation of the act, a competitor does not violate the act by meeting this competition with a corresponding discrimination. That Congress intended to sanction only defensive discrimination and not offensive discrimination. The theory seems to be that in addition to the cause of action against the offensive price discriminator and in addition to the right to apply to the Federal Trade Commission for an order to cease and desist—both remedies that take time and expense—there is an immediate right of self-defense. But it is available only if the discrimination started with the other fellow and it must be exercised in good faith. The proviso was never judicially construed.

If a concern starts a campaign of price discrimination in a community giving certain buyers more favorable prices than their competitors, it would seem in the public interest, in the preservation of competition, to allow a competitive seller to meet this lower discriminating price by corresponding discrimination. This would give such seller an immediate right of self-defense as well as his right to sue for damages and also request the Commission for an order against the affirmative discriminator. Applying the Standard Oil construction and S. 719 to price discriminations it means that a manufacturer may make a lower discriminatory price to a buyer any time a competitor made an equally low price. This, for all practical purposes, means that competition will supply a justification for what otherwise would constitute an unlawful price discrimination. The result would be for all practical purposes to nullify the whole section. It seems to me that a seller should be required to justify his lower discriminatory price to a buyer by showing that his competitor first made a lower and discriminating price to that buyer. In a sense, every price discrimination is made to meet competition. The main purpose of the rebates given to the Standard Oil Co. was to induce it to withdraw its patronage from rival roads and bestow it on the railroad granting the rebate. It must be assumed that Congress, when it enacted the discriminating sections of the Interstate Commerce Act, did not have any particular solicitude for this kind of practice. If unjustified price discriminations that are destructive of competition are to be stopped, then competition is a factor that should not by statute supply a justification. It is my opinion that if the seller can defend an unlawful price discrimination by proof that its lower discriminatory price was necessary in order to keep the business from going to a competitor, that it would sweep within its scope all the other provisions of the section. The Supreme Court, in other cases, under the discrimination sections of the Interstate Commerce Act, has held that competition is a factor that cannot be taken into account in justifying a discrimination in rates. There are in the Interstate Commerce Act prohibitions against two types of discriminations: (1) between places and classes of traffic; and (2) between individual shippers. As to the first class, the Supreme Court held that competition was a factor to be taken into account in determining whether conditions were substantially similar. (*I. C. C. v. Alabama Midland Ry.* (168 U. S. 144).) As to the second, relating to discrimination between individual shippers, the Court decided that competition did not supply a justification. (*Wight v. United States* (167 U. S. 512).)

It is to be borne in mind that section 2 of the Clayton Act sanctions normal competitive methods. Competition based on cost, service, and efficiency are sanctioned. Only those discriminations are condemned which put unlawful restraints on business.

If the Supreme Court construction of the statute is not changed by Congress, the section will, in my opinion, be of little value as an instrument for curbing unjust price discriminations which are destructive of competition and promotive of monopoly. The original section enacted in 9114 contained a proviso "*Provided*, That nothing contained herein shall prevent discrimination in prices between purchasers on account of differences in the * * * quantity of the commodity sold." A history of the legislation shows that Congress did not intend to permit discriminations without restraint whenever there was a difference in the quantity sold, so that a seller would be entirely relieved of the restraint of the section and could discriminate to any extent that he pleased any time there was a difference in the quantity. Congress intended that the difference in the price should bear reasonable relation to the difference in quantity; the proviso was intended only to preserve to the large buyers the economies of large-scale buying and not to give sellers the right to make lower prices irrespective of restraint. This construction of the statute was urged in *Federal Trade Commission v. Goodyear Tire & Rubber Co.* The Court rejected such construction and held that the proviso permitted discrimination regardless of effect whenever there was a difference in the quantity sold. If it were not for such construction of the statute opening this loophole, there might have been no necessity for the Robinson-Patman Act amendment.

It is my feeling that if Congress makes the existence of competition from a competitive seller a factor justifying unlawful discrimination that the result will be to put competing buyers on unequal planes of equality which will result in the destruction of competition and the creation of monopolies.

In the Standard Oil case the Supreme Court held that the establishment of good faith under the section 2 (b) proviso constituted a substantive defense to a charge of unlawful price discrimination. Mr. Justice Burton who delivered the opinion of the Court said:

"The defense in subsection (b), now before us, is limited to a price reduction made to meet in good faith an equally low price of a competitor. It thus eliminates certain difficulties which arose under the original Clayton Act. For example, it omits reference to discriminations in price 'in the same or different communities * * *' and it thus restricts the proviso to price differentials occurring in actual competition. It also excludes reductions which undercut the 'lower price' of a competitor. None of these changes, however, cut into the actual core of the defense. That still consists of the provision that wherever a lawful lower price of a competitor threatens to deprive a seller of a customer, the seller, to retain that customer, may in good faith meet that lower price. Actual competition, at least in this elemental form, is thus preserved."

* * * * *

"In addition, there has been widespread understanding that, under the Robinson-Patman Act, it is a complete defense to a charge of price discrimination for the seller to show that its price differential has been made in good faith to meet a lawful and equally low price of a competitor. This understanding is reflected in actions and statements of members and counsel of the Federal Trade Commission. Representatives of the Department of Justice have testified to the effectiveness and value of the defense under the Robinson-Patman Act. We see no reason to depart now from that interpretation."

* * * * *

"There is nothing to show a congressional purpose, in such a situation, to compel the seller to choose only between ruinously cutting its prices to all its customers to match the price offered to one, or refusing to meet the competition and then ruinously raising its prices to its remaining customers to cover increased unit costs. There is, on the other hand, plain language and established practice which permits a seller, through section 2 (b), to retain a customer by realistically meeting in good faith the price offered to that customer, without necessarily changing the seller's price to its other customers."

* * * * *

S. 719 legislatively reinforces the above. The title of S. 719 is "To establish beyond doubt that, under the Robinson-Patman Act, it is a complete defense to a charge of price discrimination for the seller to show that its price differential has been made in good faith to meet the equally low price of a competitor." The Standard Oil decision and S. 719 makes it a complete defense to a charge of unlawful price discrimination for a seller to show that his price differential was made in good faith to meet the equally low price of a competitor. It is to be noted that the meeting of an unequally low price by a competitor affords justification. The price of the competitor does not have to be a discriminatory or an unlawful one. This seems to me coming pretty close to saying that a seller can make a discriminatory lower price to a buyer whenever he is of the opinion that it was necessary to draw the purchaser away from the competitor. If this is what it means, then it seems to me that from a practical standpoint that it would just about render the whole section a nullity. It seems to me that the mere fact that there is competition is a factor that should not afford a justification for what would otherwise constitute a violation of the section. I think a seller should have the right to, in good faith, meet a lower discriminatory price made by a competitor. This would only sanction price discrimination for defensive purposes and would not give a seller the right to discrimination and give some purchasers a lower price merely to meet a nondiscriminatory price of a competitor.

What I have said in this memorandum is not to be taken in the slightest of any criticism of the Court in placing the construction it did upon section 2 (b). Section 2 (b) is most uncertain. It is my opinion that Congress when it enacted the Robinson-Patman amendment thought that the good faith proviso in the original section was too broad and that it intended to limit and not broaden the section in this regard. It is my opinion from a study of the legislative history that the proper construction was that given it by Mr. Justice Reed and that this construction was the one intended by Congress. However this may be, the proviso is most uncertain and open to the construction placed upon it by the Court. Of course the Supreme Court's construction is now the law and will remain so unless changed by Congress. There can be no substantial progress in curbing practices destructive of competition without clarifying the antitrust laws as well as strengthening them.

Respectfully submitted.

W. T. KELLEY,
General Counsel.

MARCH 1, 1951.

Memorandum for the Commission.

The Supreme Court in *Standard Oil Company* v. *Federal Trade Commission* decided January 8, 1951, held that the proviso contained in section 2 (b) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, reading, *"Provided, however,* That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor," constituted a substantive defense to a charge of unlawful price discrimination in violation of section 2.

The Commission is of the opinion that this section as now judicially construed by the Supreme Court will not be an adequate or effective instrument for the prevention of price discriminations having the effect of substantially lessening competition and tending to build up monopolies. S. 719 legislatively confirms the holding of the Court and, if enacted, would make it a complete defense to a charge of price discrimination for the seller to show that its price differential has been made in good faith to meet the equally low price of a competitor.

All price discriminations are in a sense made to meet competition. If the meeting in good faith of an equally low price of a competitor should be deemed to supply a justification for a discrimination between buyers, unjustified by differences in cost and having an injurious effect on competition, it would, in the judgment of the Commission, substantially lessen the effectiveness of the statute as an instrument for curbing unjust discriminations. Section 2 (b), as construed by the Court, and S. 719, if enacted, would not only make competition a factor to be taken into account but for all practical purposes the existence of competition would constitute justification for destructive price discriminations.

If a powerful concern starts discriminating in price between purchasers in a particular community in violation of the section, the Commission is of the opinion that a competitor should have the right to meet this low discriminatory price with a corresponding discrimination; that the statute should sanction only defensive discriminations made in good faith to meet the low discriminatory price of a competitor; in other words, that a seller may make a proportionately low discriminatory price having the effects set out in the statute only if his competitor has already made an equally low and discriminating price to that purchaser, or purchasers as the case may be.

Respectfully submitted.

W. T. KELLEY,
General Counsel.

MARCH 1, 1951.

Mr. JOHNSON of Colorado. Mr. President, the Senator from Illinois says it is not the Congress who writes the laws. He says the agencies have their general counsel write whatever opinions are deemed necessary to accomplish their purpose.

Mr. President, I have worked hard for 3 years on this legislation. Nevertheless I have no hestitation in saying that if the Department of Justice had exclusive jurisdiction to enforce the antitrust laws, there would be no need whatever for this bill or for those 3 years of work.

THE OBJECTIONS TO THE BILL

Three objections to the enactment of this bill are given in the minority views.

First it is said that adequate hearings have not been held. As chairman of the Committee on Interstate and Foreign Commerce, I feel particularly qualified to speak on that subject. Our committee has held at least four sets of hearings on this subject in the last 3 years Printed congressional hearings on this subject include the testimony of more than 105 witnesses. If any subject ever to come before the Congress has ever been thoroughly debated and explored from every possible approach, it is this question of the right of sellers to engage in good-faith competition.

Since that report was filed, the Senate Small Business Committee heard 30 witnesses testify on this bill. Most of the 16 witnesses who testified against the bill had been heard before. Some had been heard three times before. In any event, that objection no longer exists.

In the last session the Congress passed Senate bill 1008, which the President vetoed because he found the language used was confusing, rather than clarifying. While Senate bill 1008 covered additional matters, there is nothing in this bill that was not included in Senate bill 1008. The drafting of proper legislation to accomplish a specific purpose is not a matter for public hearings, but is a problem for the trained legal experts of the Judiciary Committee.

In drafting this bill the sponsors had the benefit of the official and formal advice of our highest judicial authority. This bill adopts only that part of the former legislation which was construed and approved by the Supreme Court.

The minority views complains that the bill adopts the Supreme Court decision in the Standard Oil case. We are urged to overrule the Supreme Court. Yet that is exactly opposite to the view which the opponents of this measure expressed on the floor of the Senate last year.

On January 20, 1950, the junior Senator from Tennessee, referring to the then pending Standard Oil case, said that—

> It seems to me that we should wait until that decision is handed down, and then we will be better able to draft legislation.

Now we hear complaints because the advice of the Court is to be followed. Mr. President, how are we going to please persons who take that position?

The third objection is that the bill goes beyond the "decision" in the Standard Oil case. A distinction is made between the Court's decision and the dicta in the majority opinion. We are criticized because the bill adopts the dicta of the Supreme Court to the effect that a seller is not in good faith when he meets an unlawful price, and to that extent the bill is said to go beyond the decision. Regardless of whether that is dicta, the criticism is that the bill follows in every respect the views of the Supreme Court majority.

The PRESIDING OFFICER. The 30 minutes allotted to the Senator from Colorado have expired.

Mr. JOHNSON of Colorado. Mr. President, will the Senator yield further time to me?

Mr. BUTLER of Maryland. Mr. President, on behalf of the minority leader, I yield to the Senator from Colorado sufficient time to enable him to complete his remarks.

Mr. JOHNSON of Colorado. I thank the Senator from Maryland very much.

Mr. President, suppose the drafters of this bill had reversed what the opponents say is only the dicta of the Supreme Court. Would not the opponents of this measure have been the first to complain that the bill would overrule the Supreme Court?

I cannot understand the argument of the opposition that the law should prohibit a seller from meeting the lawful prices of his competitors, but should permit him to meet the unlawful prices of his competitors.

Let us stop and think that one out. Assume that one of my competitors offers a lawful lower price to my customers. If I cannot meet that price, my customers will purchase the goods from my competitor at that lower price, and no law will be violated. How can I compete if I am denied the right to meet the price which my competitor lawfully offers to my customer?

However, if my competitor's price is an illegal one, then the opponents of this measure urge that I, too, should be permitted to violate the law in order to meet that illegal price. Think of that, Mr. President. That is the argument of the opponents of this measure. They complain that we would not permit another person to meet an illegal price which was offered. The theory, as expressly stated in the minority views, is that two wrongs may make a right. I cannot subscribe to that philosophy. That is also exactly opposite to the argument which was made against the bill in the last Congress.

Senators will recall the arguments of the junior Senator from Louisiana [Mr. LONG] about "dancing partners." The Senator said that Senate bill 1008 was bad proposed legislation because it would permit sellers to have admittedly illegal prices if they could just get someone else to make an illegal price—or, as he put it, if they could just get "a dancing partner."

Mr. LONG. Mr. President, will the Senator yield at this point for a question?

Mr. JOHNSON of Colorado. Yes; if the Senator will use his own time. I am speaking on borrowed time, and I do not wish to abuse the courtesy which has been extended to me by those who have been so generous to me.

Mr. LONG. Mr. President, I ask unanimous consent that the time used in asking my question not be charged against the time allotted to the Senator from Colorado.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. LONG. Speaking of the "dancing partner" question, I wonder whether the Senator from Colorado would comment on this situation, which was referred to previous to today: The minority views spell out how the very type of practice of discriminating in favor of large chain stores would be legal under the provisions of this bill. For example, if a small company supplying salt to the Atlantic & Pacific Tea Co. and to the five other large chains was willing to reduce its price to those chains by 10 percent, let us say, it would then be legal, under the provisions

of this bill, for the Morton Salt Co. to discriminate in price to the extent of 10 percent in favor of those large chains. Of course, that would make it very difficult for independent merchants to compete on that item; and the same would be true in the case of all other items sold to large concerns under such circumstances.

FAIR-TRADE LAWS

Mr. JOHNSON of Colorado. There has been a great deal of concern over a recent Supreme Court decision affecting the fair-trade laws. I need not remind the Senate that neither that decision nor the fair-trade laws are in any way involved in this measure. This bill just does not have any application to trademarked goods. They are sold to both chains and independents. Since one seller cannot lawfully give the chains a discriminatory price, others could not lawfully meet a discriminatory price to the chains.

Mr. LONG. Mr. President, will the Senator yield for a question?

Mr. JOHNSON of Colorado. Yes, on the same terms.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LONG. I say to the Senator that so far as the fair-trade laws are concerned, I see no applicability of them to this case, and I reserve judgment on that question. I certainly would say that it should not be fair for a concern to make a much lower price to its large customers, such as the large chains, as against the smaller ones.

Mr. JOHNSON of Colorado. The Senator says that the fair-trade laws have no application to this case. However, the law he is advocating actually would destroy the effect of the decision in the Standard Oil of Indiana case, where the very situation of which I am speaking was involved. In the case of the Standard Oil Co. of Indiana, that company favored four large companies, at the expense of hundreds of small independent filling-station operators in the city of Detroit. Under those circumstances nothing could be done to help the independents; and about all they could hope to do would be to try to remain in business, but slowly to be put out of business.

What relief could there be for the filling stations which were denied relief in the Standard Oil Co. of Indiana case? In that case the competitor was getting gasoline at 2 cents below their price, and the mark-up was only approximately 3 cents. So there was very little chance for them to compete. Similarly, suppose those supplying the Atlantic & Pacific Tea Co. with salt gave their customers the same advantage, comparatively, that the Standard Oil Co. of Indiana gave in the other case.

Mr. LONG. In the case of the pending bill, we are not talking about a different price, but we are talking about meeting the price of a competitor.

Mr. JOHNSON of Colorado. Also, in connection with the Atlantic & Pacific Tea Co. case, the Senator is talking about standard goods which have a uniform price, and a situation in which there are laws which do not permit a particular article to be sold at different prices to chains and to independents, but require the goods to be sold at the same price to all.

In the case of the Standard Oil Co. of Indiana, why should not the Standard Oil Co. be permitted to meet the lower price of its competitor?

Mr. LONG. If it meets the price offered by the Red Indian Gasoline Co. in the case of four of its customers, why should not it reduce its price to the same extent to all of its independent customers, so that all would have a chance to sell gasoline to the public on fair competitive terms and conditions?

Mr. JOHNSON of Colorado. Of course, the Senator is going to another point now. The whole purpose of the bill is to permit a businessman to meet the price level of his competitors. That is the whole object we are seeking to accomplish. We are trying to give him an opportunity to meet the price level of his competitor.

Mr. LONG. If he is to be permitted to meet the price level of his competitors with regard to some of his customers, why should be not be permitted to meet the price level of his competitor with regard to all the rest of his customers?

Mr. JOHNSON of Colorado. That is an enlargement of the proposition which is before us. I do not know what the answer to that would be. I do not know what the Senator's objection is. Is there anything wrong about a businessman meeting the price of a competitor who is cutting the price?

Mr. LONG. Certainly the only thing that is wrong about it is that he is meeting the price with regard to some of his customers, and thereby enabling those few customers to run all the other customers out of business. If he were willing to meet the low price on gasoline for the benefit of all customers, as I understand from the case cited, everything would be fine; but, instead, the Standard Oil Co. reduced its price to a few favored customers, with the result of completely driving the other customers out of business. That is what we are complaining about with respect to this bill. It is the very foundation on which the bill is predicated.

Mr. JOHNSON of Colorado. Of course, I differ completely with the Senator as to that. I think his conclusions are entirely erroneous.

Mr. LONG. The Senator will not argue that that is what was decided in the case on the Standard Oil Co. of Indiana, will he?

Mr. JOHNSON of Colorado. We will put the decision in the Standard Oil case in the RECORD, if the Senator is not clear about it. If he wants further information concerning it, we will put it in the RECORD, where he can read it for himself.

Mr. LONG. If what I have stated is not what was decided in the Standard Oil Co. of Indiana case, will the Senator from Colorado kindly inform us what was decided?

Mr. JOHNSON of Colorado. I will let the Senator from Louisiana reach his own conclusion. He is a very good lawyer. He can read the decision and reach his own conclusion. I am not going to make the very great mistake of interpreting the law to a lawyer. I can put the opinion in the RECORD, if the Senator really wants to refresh his mind about it, and wants to catch up on it and find out exactly what was said. I noticed that in the majority opinion the Supreme Court quoted from the Staley case, the Corn Products Refining Co. case, and many other cases; and I notice that they also refer to the Cement Institute case, the case of Federal Trade Commission against the Cement Institute.

Mr. BUTLER of Maryland. Mr. President, will the Senator yield, so that I may ask the Senator from Louisiana a question?

Mr. JOHNSON of Colorado. I ask unanimous consent that I may yield to the Senator from Maryland for that purpose.

The PRESIDING OFFICER. Without objection, the Senator from Maryland may proceed.

Mr. BUTLER of Maryland. I will ask the question in our time. I should like to ask the Senator from Louisiana a question, and I do not desire to get into too much of an argument about it, because the time is limited.

If a man in good faith cannot cut his price to meet that of a competitor, he is going to lose the business, is he not? Now, if he loses enough of it, he will have to go out of business. It all depends upon who is going to be put out of business, does it not?

Mr. LONG. Let me state the answer to the question.

Mr. BUTLER of Maryland. If he meets his competitor's price someone else may suffer, because that is competition, and it is pretty severe competition, we will all admit; but, if he does not meet it, then his competitor puts him out of business.

Mr. LONG. May I answer that question?

Mr. BUTLER of Maryland. Yes; I should like to have the answer.

Mr. LONG. This is the answer, submitted by the Federal Trade Commission in a case before it. Here was a case where the price was reduced to four major customers of the Standard Oil Co. in the city of Detroit; but it was not reduced to their hundreds of other customers, with the result that the four major customers were in a position to drive the hundreds of others out of business. The junior Senator from Louisiana believes the Robinson-Patman Act was designed to say in such a situation, "If you want to reduce your price to four customers, reduce it to all your other customers."

Mr. BUTLER of Maryland. The Senator is begging the question. If a businessman does not meet a price that is charged, he is going to suffer a very serious economic loss. Notwithstanding what the Federal Trade Commission says about it or what the Senator from Louisiana thinks the law ought to be, a businessman must meet the equally low price of his competitor or the chances are that eventually he will be forced out of business. If he meets it, perhaps some one else is going to be hurt. The question is, Whom are we going to hurt? Why not err on the side that will promote competition, rather than stifle it?

Mr. LONG. Mr. President, will the Senator yield, that I may answer that question?

Mr. BUTLER of Maryland. Yes, I should like to have the answer.

Mr. LONG. The answer to that question is that the Robinson-Patman Act was intended and was passed for the purpose of giving to all the small independent merchants the same chance to compete that the law gives to the chain stores. The purpose was to say, "If you want to discriminate in your price, you must treat all of your customers alike." If the Standard Oil Co. of Indiana wanted to discriminate in favor of four customers, it had to reduce its price to all customers. The Robinson-Patman Act was passed for the purpose of making it give the same consideration to its other customers.

In order to give the Senator an answer to his question, applying that reasoning to the facts in the Standard Oil Co. case, if the Red Indian Gasoline Co. offered to cut the price of the Standard Oil Co. to four customers in Detroit, if that price was not discriminatory, and if it were treating all its other customers alike, the company could follow that course. If the price was discriminatory, and if they were not treating all of their other customers in the same way, then they would not be in a position to cut their price merely to the four customers. If the Standard Oil Co. wanted to hold on to those four customers, it should have fixed a price for all its filling-station customers, rather than for a favored few.

Mr. BUTLER of Maryland. The Senator's hypothesis is wrong. Section 2 (b) of the act specifically provides that if, in good faith, to meet an equally low price of a competitor, one cuts his price, he is within the law. It says nothing about what is to happen if, by so doing, he creates a monopoly, or whether, by so doing, his act may tend to create a monopoly. It says that if he does it in good faith to meet an equally low price, he has done nothing wrong.

Mr. LONG. Of course, the Senator knows that the majority of the Supreme Court took the side which he is urging at the moment, and they did say that that is a complete defense, where the price is fixed to retain a customer; but it did not say it was legal to do that in order to gain a customer.

Mr. BUTLER of Maryland. The Senator does not understand me. I am not taking either side. I want to know the plain economic answer to the question I have asked. Someone is going to get hurt. Competition is bound to hurt. Now, whom are we going to hurt?

Mr. KEFAUVER. Mr. President, will the Senator yield?

Mr. BUTLER of Maryland. Will not the Senator wait a minute? I may say that we are talking in another Senator's time, and I would rather not yield.

Mr. KEFAUVER. I desired to supplement very briefly the answer given by the Senator from Louisiana. If it is very desirable for the Standard Oil Co. to have the business of the four customers, and it can afford to sell to them at the lower price, would it not be good business for them, and would it not also be appropriate business for them, to sell to all the other customers at the same price? In other words, if the Standard Oil Co. needed the four customers in order to keep from going out of business, it then must need all of the 100 others equally as much.

Mr. BUTLER of Maryland. I am not here to defend the Standard Oil Co. or anyone else. I thought I asked a sensible question. Whether the management of a given company thinks it ought to cut its price for B because it cuts its price for A, when of necessity it must cut it for A, is something which the management must decide. But I say we have the plain question here: When it is necessary to cut a price in order to meet cost competition, why should it not be permissible to do so?

Mr. DOUGLAS. Mr. President, will the Senator yield?

Mr. BUTLER of Maryland. As I said, I am sorry, I cannot yield. I am talking in the time of the Senator from Colorado and I cannot yield because I do not have the floor.

Mr. JOHNSON of Colorado. I decline to yield. For the benefit of Senators who are not clear regarding the Supreme Court decision in the Standard Oil Co. case, I ask unanimous consent to have it printed at this point in the RECORD.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Colorado?

Mr. KEFAUVER. Does that include the minority opinion?

Mr. JOHNSON of Colorado. It includes everything pertaining to the decision, including the dissenting opinion. It includes the whole decision.

Mr. DOUGLAS. Mr. President, will the Senator from Colorado be willing to insert the decision of the Seventh Circuit Court?

Mr. JOHNSON of Colorado. If the Senator wants to put that in the RECORD, that is all right with me. I have no objection to his doing so.

There being no objection, the opinions in the case of Standard Oil Co. against Federal Trade Commission were ordered to be printed in the RECORD, as follows:

SUPREME COURT OF THE UNITED STATES—No. 1, OCTOBER TERM, 1950—STANDARD OIL CO., PETITIONER, V. FEDERAL TRADE COMMISSION

(On writ of certiorari to the United States Court of Appeals for the Seventh Circuit (January 8, 1951))

Mr. Justice Burton delivered the opinion of the Court.

In this case the Federal Trade Commission challenged the right of the Standard Oil Co. under the Robinson-Patman Act,[1] to sell gasoline to four comparatively large "jobber" customers in Detroit at a less price per gallon than it sold like gasoline to many comparatively small service station customers in the same area. The company's defenses were that (1) the sales involved were not in interstate commerce and (2) its lower price to the jobbers was justified because made to retain them as customers and in good faith to meet an equally low price of a competitor.[2] The Commission, with one member dissenting, ordered the company to cease and desist from making such a price differential (43 F. T. C. 56). The Court of Appeals slightly modified the order and required its enforcement as modified (173 F. 2d 210). We granted certiorari on petition of the company because the case presents an important issue under the Robinson-Patman Act which has not been settled by this Court (338 U. S. 865). The case was argued at our October term, 1949, and reargued at this term (339 U. S. 975).

For the reasons hereinafter stated, we agree with the court below that the sales were made in the interstate commerce but we agree with petitioner that, under the act, the lower price to the jobbers was justified if it was made to retain each of them as a customer and in good faith to meet an equally low price of a competitor.

I. FACTS

Reserving for separate consideration the facts determining the issue of interstate commerce, the other material facts are summarized here on the basis of the Commission's findings. The sales described are those of Red Crown gasoline because those sales raise all of the material issues and constitute about 90 percent of petitioner's sales in the Detroit area.

Since the effective date of the Robinson-Patman Act, June 19, 1936, petitioner has sold its Red Crown gasoline to its jobber customers at its tank-car prices. Those prices have been 1½ cents per gallon less than its tank-wagon prices to service station customers for identical gasoline in the same area. In practice, the service stations have resold the gasoline at the prevailing retail service station prices.[3] Each of petitioner's so-called jobber customers has been free to resell its gasoline at retail or wholesale. Each, at some time, has resold some of it at retail. One now resells it only at retail. The others now resell it largely at wholesale. As to resale prices, two of the jobbers have resold their gasoline only at the prevailing wholesale or retail rates. The other two, however, have reflected, in varying degrees, petitioner's reductions in the cost of the gasoline to them by reducing their resale prices of that gasoline below the prevailing rates. The effect of these reductions has thus reached competing retail service stations in part through retail stations operated by the jobbers, and in part through retail stations which purchased gasoline from the jobbers at less than the prevailing tank-wagon prices. The Commission found that such reduced resale prices " have resulted in injuring, destroying, and preventing competition between said favored dealers and retail dealers in respondent's [petitioner's] gasoline and other major brands of gasoline * * * (41 F. T. C. 263, 283). The distinctive characteristics of these jobbers are that each (1) maintains sufficient bulk storage to take delivery of gasoline in tank-car quantities (of 8,000 to 12,000 gallons) rather than in tank-wagon quantities (of 700 to 800 gallons) as is customary for service stations; (2) owns and operates tank wagons and other facilities for delivery of

[1] Specifically under sec. 2 of the Clayton Act, as amended by the Robinson-Patman Act (49 Stat. 1526; 15 U. S. C., sec. 13). For the material text of sec. 2 (a) and (b) see pp. 9–19, infra.

[2] The company contended before the Commission that the price differential allowed by it to the jobbers made only due allowance for differences in the cost of sale and delivery of gasoline to them. It did not, however, pursue this defense in the court below and does not do so here.

[3] About 150 of these stations are owned or leased by the customer independently of petitioner. Their operators buy all of their gasoline from petitioner under short-term agreements. Its other 208 stations are leased or subleased from petitioner for short terms.

gasoline to service stations; (3) has an established business sufficient to insure purchases of from one to two million gallons a year; and (4) has adequate credit responsibility.[4] While the cost of petitioner's sales and deliveries of gasoline to each of these four jobbers is no doubt less, per gallon, than the cost of its sales and deliveries of like gasoline to its service station customers in the same area, there is no finding that such difference accounts for the entire reduction in price made by petitioner to these jobbers, and we proceed on the assumption that it does not entirely account for that difference.

Petitioner placed its reliance upon evidence offered to show that its lower price to each jobber was made in order to retain that jobber as a customer and in good faith to meet an equally low price offered by one or more competitors. The Commission, however, treated such evidence as not relevant.

II. THE SALES WERE MADE IN INTERSTATE COMMERCE

In order for the sales here involved to come under the Clayton Act, as amended by the Robinson-Patman Act, they must have been made in interstate commerce.[5] The Commission and the court below agree that the sales were so made (41 F. T. C. 263, 271, 173 F. 2d 210, 213–214).

Facts determining this were found by the Commission as follows: Petitioner is an Indiana corporation, whose principal office is in Chicago. Its gasoline is obtained from fields in Kansas, Oklahoma, Texas, and Wyoming. Its refining plant is at Whiting, Ind. It distributes its products in 14 Middle Western States, including Michigan. The gasoline sold by it in the Detroit, Mich., area, and involved in this case, is carried for petitioner by tankers on the Great Lakes from Indiana to petitioner's marine terminal at River Rouge, Mich. Enough gasoline is accumulated there during each navigation season so that a winter's supply is available from the terminal. The gasoline remains for varying periods at the terminal or in nearby bulk-storage stations, and while there it is under the ownership of petitioner and en route from petitioner's refinery in Indiana to its market in Michigan. "Although the gasoline was not brought to River Rouge pursuant to orders already taken, the demands of the Michigan territory are fairly constant, and petitioner's customers' demands could be accurately estimated, so the flow of the stream of commerce kept surging from Whiting to Detroit" (173 F. 2d at 213–214). Gasoline delivered to customers in Detroit, upon individual orders for it, is taken from the gasoline at the terminal in interstate commerce en route for delivery in that area. Such sales are well within the jurisdictional requirements of the act. Any other conclusion would fall short of the recognized purpose of the Robinson-Patman Act to reach the operations of large interstate businesses in competition with small local concerns. Such temporary storage of the gasoline as occurs within the Detroit area does not deprive the gasoline of its interstate character. *Stafford* v. *Wallace* (258 U. S. 495). Compare *Walling* v. *Jacksonville Paper Co.* (317 U. S. 564, 570) with *Atlantic Coast Line R. Co.* v. *Standard Oil Co.* (275 U. S. 257, 268.)[6]

III. THERE SHOULD BE A FINDING AS TO WHETHER OR NOT PETITIONER'S PRICE REDUCTION WAS MADE IN GOOD FAITH TO MEET A LAWFUL EQUALLY LOW PRICE OF A COMPETITOR

Petitioner presented evidence tending to prove that its tank-car price was made to each "jobber" in order to retain that "jobber" as a customer and in good faith to meet a lawful and equally low price of a competitor. Petitioner sought to show that it succeeded in retaining these customers, although the tank-car price which it offered them merely approached or matched, and did not undercut, the lower prices offered them by several competitors of petitioner. The trial examiner made findings on the point[7] but the Commission declined to do so, saying:

"Based on the record in this case the Commission concludes as a matter of law that it is not material whether the discriminations in price granted by the respondent to the said four dealers were made to meet equally low prices of competitors. The Commission further concludes as a matter of law that it is unnecessary for the Commission to determine whether the alleged competitive prices were in fact available or involved gasoline of like grade or quality or of equal public acceptance. Accordingly the Commission does not attempt to find the facts regarding those matters because, even though the lower prices in question may have been made by respondent in good faith to meet the lower prices of competitors, this does not constitute a defense in the face of affirmative proof that the effect of the discrimination was to injure, destroy and prevent competition with the retail stations operated by the said named dealers and with stations operated by their retailer-customers" (41 FTC 263, 281–282).

The court below affirmed the Commission's position.[8]

There is no doubt that under the Clayton Act, before its amendment by the Robinson-Patman Act, this evidence would have been material and, if accepted, would have established a complete defense to the charge of unlawful discrimination. At that time the material provisions of section 2 were as follows:

"SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities * * * where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade." (38 Stat. 730–731, 15 U. S. C. (1934 ed.), sec. 13.)

The question before us, therefore, is whether the amendments made by the Robinson-Patman Act deprived those facts of their previously recognized effectiveness as a defense. The material provisions of section 2, as amended, are quoted below, showing in italics those clauses which bear upon the proviso before us. The modified provisions are distributed between the newly created subsections (a) and (b). These must be read together and in relation to the provisions they supersede. The original phrase "that nothing herein contained shall prevent" is still used to introduce each of the defenses. The defense relating to the meeting of the price of a competitor appears only in subsection (b). There it is applied to discriminations in services or facilities as well as to discriminations in price, which alone are expressly condemned in subsection (a). In its opinion in the instant case, the Commission recognizes that it is an absolute defense to a charge of price discrimination for a seller to prove, under section 2 (a), that its price differential makes only due allowances for differences in cost or for price changes made in response to changing market conditions. (41 F. T. C. at 283.) Each of these three defenses is introduced by the same phrase "nothing * * * shall prevent," and all are embraced in the same word "justification" in the first sentence of section 2 (b). It is natural, therefore, to conclude that each of these defenses is entitled to the same effect, without regard to whether there also appears an affirmative showing of actual or potential injury to competition at the same or a lower level traceable to the price differential made by the seller. The

[4] Not denying the established industry practice of recognizing such dealers as a distinctive group for operational convenience, the Commission held that petitioner's classification of these four dealers as "jobbers" was arbitrary because it made "no requirement that said jobbers should sell only at wholesale" (41 F. T. C. at 273). We use the term "jobber" in this opinion merely as one of convenience and identification, because the result here is the same whether these four dealers are wholesalers or retailers.

[5] Section 2 (a) of the Clayton Act, as amended, relates only to persons "engaged in commerce, in the course of such commerce * * * where either or any of the purchases involved * * * are in commerce * * *." (49 Stat. 1526, 15 U. S. C. sec. 13 (a)). "Commerce" is defined in section 1 of the Clayton Act as including "trade or commerce among the several States * * *" (38 Stat. 730, 15 U. S. C. sec. 12).

[6] The Fair Labor Standards Act cases relied on by petitioner are not inconsistent with this result. They hold that, for the purposes of that statute, interstate commerce ceased on delivery to a local distributor. *Higgins* v. *Carr Bros. Co.* (317 U. S. 572); *Walling* v. *Jacksonville Paper Co.*, supra. The sales involved here, on the other hand, are those of an interstate producer and refiner to a local distributor.

[7] The trial examined concluded:

"The recognition by respondent [petitioner] of Ned's Auto Supply Co. as a jobber or wholsaler [which carried with it the tank-car price for gasoline], was a forced recognition given to retain that company's business. Ned's Co. at the time of recognition, and ever since, has possessed all qualifications required by respondent [petitioner] for recognition as a jobber and the recognition was given and has ever since been continued in transactions between the parties, believed by them to be bona fide in all respects * * *." (Conclusion of Fact 2, under sec. IX, R. 5098–5099.)

"The differentials on its branded gasolines respondent [petitioner] granted Ned's Auto Supply Co., at all times subsequent to March 7, 1938, and Stikeman Oil Co., Citrin-Kolb Oil Co., and the Wayne Co.—the four jobbers—at all times subsequent to June 19, 1936, were granted to meet equally low prices offered by competitors on branded gasolines of comparable grade and quality." (Conclusion of Fact, under sec. X, R. 5104.)

[8] "Now as to the contention tht the discriminatory prices here complained of were made in good faith to meet a lower price of a competitor. While the Commission made no finding on this point, it assumed its existence but held, contrary to the petitioner's contention, that this was not a defense.

* * * * *

"We agree with the Commission that the showing of the petitioner that it made the discriminatory price in good faith to meet competition is not controlling in view of the very substantial evidence that its discrimination was used to affect and lessen competition at the retail level" (173 F. 2d. at 214, 217).

Commission says, however, that the proviso in section 2 (b) as to a seller meeting in good faith a lower competitive price is not an absolute defense if an injury to competition may result from such price reduction. We find no basis for such a distinction between the defenses in section 2 (a) and (b).

The defense in subsection (b), now before us, is limited to a price reduction made to meet in good faith an equally low price of a competitor. It thus eliminates certain difficulties which arose under the original Clayton Act. For example, it omits reference to the discriminations in price "in the same or different communities * * *," and it thus restricts the proviso to price differentials occurring in actual competition. It also excludes reductions which undercut the lower price of a competitor. None of these changes, however, cut into the actual core of the defense. That still consists of the provision that wherever a lawful lower price of a competitor threatens to deprive a seller of a customer, the seller, to retain that customer, may in good faith meet that lower price. Actual competition, at least in this elemental form, is thus preserved.

Subsections 2 (a) and (b), as amended, are as follows:

"SEC. 2. (a) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, That nothing herein contained shall prevent* differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered * * *: *And provided further, That nothing herein contained shall prevent* price changes from time to time * * * in response to changing conditions affecting the market for or the marketability of the goods concerned. * * *

"(b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, *the burden of rebutting the prima facie case thus made by showing justification* shall be upon the person charged with a violation of this section, and *unless justification shall be affirmatively shown*, the Commission is authorized to issue an order terminating the discrimination: *Provided, however, That nothing herein contained shall prevent* a seller rebutting the prima facie case thus made by *showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.*" (49 Stat. 1526, 15 U. S. C., sec. 13 (a) and (b).)

This right of a seller, under section 2 (b), to meet in good faith an equally low price of a competitor has been considered here before. Both in *Corn Products Refining Co.* v. *Federal Trade Comm'n* (324 U. S. 726), and in *Federal Trade Comm'n* v. *Staley Mfg. Co.* (324 U. S. 746), evidence in support of this defense was reviewed at length. There would have been no occasion thus to review it under the theory now contended for by the Commission. While this Court did not sustain the seller's defense in either case, it did unquestionably recognize the relevance of the evidence in support of that defense. The decision in each case was based upon the insufficiency of the seller's evidence to establish its defense, not upon the inadequacy of its defense as a matter of law.[9]

In the Corn Products case, supra, after recognizing that the seller had allowed differentials in price in favor of certain customers, this Court examined the evidence presented by the seller to show that such differentials were justified because made in good faith to meet equally low prices of a competitor. It then said:

"Examination of the testimony satisfies us, as it did the court below, that it was insufficient to sustain a finding that the lower prices allowed to favored customers were in fact made to meet competition. Hence petitioners failed to sustain the burden of showing that the price discriminations were granted for the purpose of meeting competition." (324 U. S. at 741).[10]

In the Staley case, supra, most of the Court's opinion is devoted to the consideration of the evidence introduced in support of the sellers' defense under section 2 (b). The discussion proceeds upon the assumption, applicable here, that if a competitor's lower price is a lawful individual price offered to any of the seller's customers, then the seller is protected, under section 2 (b), in making a counteroffer provided the seller proves that its counteroffer is made to meet in good faith its competitor's equally low price. On the record in the Staley case, a majority of the court of appeals, in fact, declined to accept the findings of the Commission and decided in favor of the accused seller.[11] This Court, on review, reversed that judgment but emphatically recognized the availability of the seller's defense under section 2 (b) and the obligation of the Commission to make findings upon issues material to that defense. It said:

"Congress has left to the Commission the determination of fact in each case whether the person, charged with making discriminatory prices, acted in good faith to meet a competitor's equally low prices. The determination of this fact from the evidence is for the Commission. See *Federal Trade Commission* v. *Pacific States Paper Trade Assn.* (273 U. S. 52, 63); *Federal Trade Commission* v. *Algoma Lumber Co.* (291 U. S. 67, 73). In the present case, the Commission's finding that respondents' price discriminations were not made to meet a 'lower' price and consequently were not in good faith, is amply supported by the record, and we think the court of appeals erred in setting aside this portion of the Commission's order to cease and desist.

* * * * *

"In appraising the evidence, the Commission recognized that the statute does not place an impossible burden upon sellers, but it emphasized the good-faith requirement of the statute, which places the burden of proving good faith on the seller, who has made the discriminatory prices. * * *

"* * * We agree with the Commission that the statute at least requires the seller, who has knowingly discriminated in price, to show the existence of facts which would lead a reasonable and prudent person to believe that the granting of a lower price would in fact meet the equally low price of a competitor. Nor was the Commission wrong in holding that respondents failed to meet this burden." (324 U. S. at 758, 759–760.)

See also *Federal Trade Comm'n* v. *Cement Institute* (333 U. S. 683, 721–726); *Federal Trade Comm'n* v. *Morton Salt Co.* (334 U. S. 37, 43); and *United States* v. *United States Gypsum Co.* (340 U. S. 76, 92). All that petitioner asks in the instant case is that its evidence be considered and that findings be made by the Commission as to the sufficiency of that evidence to support petitioner's defense under section 2 (b).

In addition, there has been widespread understanding that, under the Robinson-Patman Act, it is a complete defense to a charge of price discrimination for the seller to show that its price differential has been made in good faith to meet a lawful and equally low price of a competitor. This understanding is reflected in actions and statements of members and counsel of the Federal Trade Commission.[12] Representatives of the

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[9] In contrast to that factual situation, the trial examiner for the Commission in the instant case has found the necessary facts to sustain the seller's defense (see note 7, supra), and yet the Commission refuses, as a matter of law, to give them consideration.

[10] In the Corn Products case, the same point of view was expressed by the court of appeals below: "We think the evidence is insufficient to sustain this affirmative defense." 144 F. 2d 211, 217 (C. A. 7th Cir.). The court of appeals also indicated that, to sustain this defense, it must appear not only that the competitor's lower price was met in good faith but that such price was lawful.

[11] The Staley case was twice before the Court of Appeals for the Seventh Circuit. In 1943 the case was remanded by that court to the Commission for findings as to wherein the discriminations occurred and how they substantially lessened competition and promoted monopoly and also "for consideration of the defense [under sec. 2 (b)] urged by the petitioners, and for findings in relation thereto 135 F. 2d 453, 456). In 1944 a majority of the court decided in favor of the seller (144 F. 2d 221). One judge held that the complaint was insufficient under sec. 2 (a) and that, therefore, he need not reach the seller's defense under sec. 2 (b). He expressly stated, however, that he did not take issue with the basis for the conclusion that the seller's price was made in good faith to meet an equally low price of a competitor. Id., at 227–231. His colleague held squarely that the seller's defense of meeting competition in good faith under sec. 2 (b) had been established. Id., at 221–225. The third judge found against the seller both under sec. 2 (a) and (b). Id., at 225–227. The important point for us is that the court of appeals, as well as this Court, unanimously recognized in that case the materiality of the seller's evidence in support of its defense under sec. 2 (b), even though the "discriminations 'have resulted, and do result, in substantial injury to competition among purchasers * * *'" Id., at 222.

[12] In cease and desist orders, issued both before and after the order in the instant case, the Commission has inserted saving clauses which recognize the propriety of a seller making a price reduction in good faith to meet an equally low price of a competitor, even though the seller's discrimination may have the effect of injuring competition at a lower level. See In re Ferro-Enamel Corp. (42 F. T. C. 36); In re Anheuser-Busch, Inc. (31 F. T. C. 986); In re Bausch & Lomb Optical Co. (28 F. T. S. 186).

See also the statement filed by Walter B. Wooden, assistant chief counsel, and by Hugh E. White, examiner for the Commission, with the Temporary National Economics Committee in 1941: "The amended act now safeguards the right of a seller to discriminate in price in good faith to meet an equally low price of a competitor, but he has the burden of proof on that question. This right is guaranteed by statute and could not be curtailed by any mandate or order of the Commission. * * * The right of self-defense against competitive price attacks is as vital in a competitive economy as the right of self-defense against personal attack." The Basing Point Problem 139 (TNEC Monograph 42, 1941).

In regard to the Commission's position on sec. 2 (b), urged in the instant case, Allen

Department of Justice have testified to the effectiveness and value of the defense under the Robinson-Patman Act.[13] We see no reason to depart now from that interpretation.[14]

C. Phelps, assistant chief trial counsel and Chief of the Export Trade Division of the Commission, testified before the Subcommittee on Trade Policies of the Senate Committee on Interstate and Foreign Commerce, in June 1949, that "This position, if upheld in the courts, in my judgment will effectively and completely erase sec. 2 (b) from the Robinson-Patman Act." Hearings before a subcommittee of the Senate Committee on Interstate and Foreign Commerce on S. 236, 81st Cong., 1st sess., p. 66. See also pp. 274-275.

[13] Herbert A. Bergson, then Assistant Attorney General, testifying for the Department, January 25, 1949, said: "The section [2 (b)] presently permits sellers to justify otherwise forbidden price discriminations on the ground that the lower prices to one set of buyers were made in good faith to meet the equally low prices of a competitor." Hearings before a subcommittee of the Senate Committee on Interstate and Foreign Commerce on S. 236, 81st Cong., 1st sess., p. 77. See also report on S. 236 by Peyton Ford, assistant to the Attorney General, to the Senate Committee on Interstate and Foreign Commerce, Id., at p. 20. Mr. Bergson added the following in June 1949: "While we recognize the competitive problem which arises when one purchaser obtains advantages denied to other purchasers, we do not believe the solution to this problem lies in denying to sellers the opportunity to make sales in good faith competition with other sellers." Hearings before Subcommittee No. 1 of the House Committee on the Judiciary on S. 1008, 81st Cong., 1st sess., p. 12.

[14] Attention has been directed again to the legislative history of the proviso. This was considered in the Corn Products and Staley cases. See especially 324 U. S. at 752-753. We find that the legislative history, at best, is inconclusive. It indicates that it was the purpose of Congress to limit, but not to abolish, the essence of the defense recognized as absolute in section 2 of the original Clayton Act (38 Stat. 730), where a seller's reduction in price had been made "in good faith to meet competition. * * *" For example, the legislative history recognizes that the Robinson-Patman Act limits that defense to price differentials that do not undercut the competitor's price, and the amendments fail to protect differentials between prices in different communities where those prices are not actually competitive. There is also a suggestion in the debates, as well as in the remarks of this Court in the Staley case, supra, that a competitor's lower price which may be met by a seller under the protection of section 2 (b) must be a lawful price. (And see S. Res. 224, 70th Cong., 1st sess., directing the Federal Trade Commission to investigate and report to it on chain-store operators and FTC Final Report on the Chain-Store Investigations, S. Doc. No. 4, 74th Cong., 1st sess.)

In the report of the Judiciary Committee of the House of Representatives, which drafted the clause which became section 2 (b) there appears the following explanation of it:

"This proviso represents a contraction of an exemption now contained in section 2 of the Clayton Act which permits discriminations without limit where made in good faith to meet competition. It should be noted that while the seller is permitted to meet local competition, it does not permit him to cut local prices until his competitor has first offered lower prices, and then he can go no further than to meet those prices. If he goes further, he must do so likewise with all his other customers, or make himself liable to all of the penalties of the act, including treble damages. In other words, the proviso permits the seller to meet the price actually previously offered by a local competitor. It permits him to go no further" (H. Rept. No. 2287, 74th Cong., 2d sess.; p. 16).

(See also CONGRESSIONAL RECORD, vol. 80, pt. 6, pp. 6426, 6431-6436, and pt. 8, pp. 8229, 8235.)

Somewhat changing this emphasis, there was a statement made by the managers on the part of the House of Representatives, accompanying the conference report, which said that the new clause was a "provision relating to the question of meeting competition, intended to operate only as a rule of evidence in a proceeding before the Federal Trade Commission * * *" (H. Rept. No. 2951, 74th Cong., 2d sess.; p. 7). The chairman of the House conferees also received permission to print in the RECORD an explanation of the proviso (CONGRESSIONAL RECORD, vol. 80, pt. 9, p. 9418). This explanation emphasizes the same interpretation as that put on the proviso in the Staley case to the effect that the lower price which lawfully may be met by a seller must be a lawful price. That statement, however, neither justifies disregarding the proviso nor failing to make findings of fact where evidence is offered that the prices met by the seller are lawful prices and that the meeting of them is in good faith.

[15] It has been suggested that, in theory, the Robinson-Patman Act as a whole is inconsistent with the Sherman and Clayton Acts. See Adelman, Effective Competition and the Antitrust Laws, 61 Harv. L. Rev. 1289, 1327-1350; Burns, The Anti-Trust Laws and the Regulation of Price Competition, 4 Law & Contemp. Prob. 301; Learned & Isaacs, The Robinson-Patman Law: Some Assumptions and Expectations, 15 Harv. Bus. Rev. 137; McAllister, Price Control by Law in the United States: A Survey, 4 Law & Contemp. Prob. 273.

The heart of our national economic policy long has been faith in the value of competition. In the Sherman and Clayton Acts, as well as in the Robinson-Patman Act, Congress was dealing with competition, which it sought to protect, and monopoly, which it sought to prevent. (*Staley Mfg. Co.* v. *Federal Trade Comm'n* (135 F. 2d 455, 455).) We need not now reconcile, in its entirety, the economic theory which underlies the Robinson-Patman Act with that of the Sherman and Clayton Acts.[15] It is enough to say that Congress did not seek by the Robinson-Patman Act either to abolish competition or so radically curtail it that a seller would have no substantial right of self-defense against a price raid by a competitor. For example, if a large customer requests his seller to meet a temptingly lower price offered to him by one of his seller's competitors, the seller may well find it essential, as a matter of business survival, to meet that price rather than to lose the customer. It might be that this customer is the seller's only available market for the major portion of the seller's product, and that the loss of this customer would result in forcing a much higher unit cost and higher sales price upon the seller's other customers. There is nothing to show a congressional purpose, in such a situation, to compel the seller to choose only between ruinously cutting its prices to all its customers to match the price offered to one, or refusing to meet the competition and then ruinously raising its prices to its remaining customers to cover increased unit costs. There is, on the other hand, plain language and established practice which permits a seller, through section 2 (b), to retain a customer by realistically meeting in good faith the price offered to that customer, without necessarily changing the seller's price to its other customers.

In a case where a seller sustains the burden of proof placed upon it to establish its defense under section 2 (b), we find no reason to destroy that defense indirectly, merely because it also appears that the beneficiaries of the seller's price reductions may derive a competitive advantage from them or may, in a natural course of events, reduce their own resale prices to their customers. It must have been obvious to Congress that any price reduction to any dealer may always affect competition at that dealer's level as well as at the dealer's resale level, whether or not the reduction to the dealer is discriminatory. Likewise, it must have been obvious to Congress that any price reductions initiated by a seller's competitor would, if not met by the seller, affect competition at the beneficiary's level or among the beneficiary's customers just as much as if those reductions had been met by the seller. The proviso in section 2 (b), as interpreted by the Commission, would not be available when there was or might be an injury to competition at a resale level. So interpreted, the proviso would have such little, if any, applicability as to be practically meaningless. We may, therefore, conclude that Congress meant to permit the natural consequences to follow the seller's action in meeting in good faith a lawful and equally low price of its competitor.

In its argument here, the Commission suggests that there may be some situations in which it might recognize the proviso in section 2 (b) as a complete defense, even though the seller's differential in price did injure competition. In support of this, the Commission indicates that in each case it must weigh the potentially injurious effect of a seller's price reduction upon competition at all lower levels against its beneficial effect in permitting the seller to meet competition at its own level. In the absence of more explicit requirements and more specific standards of comparison than we have here, it is difficult to see how an injury to competition at a level below that of the seller can thus be balanced fairly against a justification for meeting the competition at the seller's level. We hesitate to accept section 2 (b) as establishing such a dubious defense. On the other hand, the proviso is readily understandable as simply continuing in effect a defense which is equally absolute, but more limited in scope than that which existed under section 2 of the original Clayton Act.

The judgment of the Court of Appeals, accordingly, is reversed, and the case is remanded to that court with instructions to remand it to the Federal Trade Commission to make findings in conformity with this opinion.

It is so ordered.

Mr. Justice Minton took no part in the consideration or decision of this case.

DISSENTING OPINION

Mr. Justice Reed, dissenting.

The Federal Trade Commission investigated practices of the Standard Oil Co. of Indiana in selling its gasoline in the Detroit area at different prices to competing local distributors, in alleged violation of the Robinson-Patman (antiprice discrimination) Act. Standard's defense is not a denial of that discriminatory practice, but a complete justification, said to be allowed by the Robinson-Patman Act, on the ground of trade necessity in order to meet an equally low price in Detroit of other gasoline refiners. In concluding the practice violated Federal prohibitions against discriminatory sale prices, the Commission entered a cease-and-desist order against Standard's sale system. The order was enforced by the court of appeals after a minor modification. (43 F. T. C. 56; 173 F. 2d 210.)

The need to allow sellers to meet competition in price from other sellers while protecting the competitors of the buyers against the buyers' advantages gained from the price discrimination was a major cause of the enactment of the 1936 Robinson-Patman Act. The Clayton Act of 1914 had failed to solve the problem. The impossibility of drafting fixed words of a statute so as to allow sufficient flexibility to meet the myriad situations of national commerce, we think led Congress in the Robinson-Patman Act to put authority in the Federal Trade Commission to determine when a seller's discriminatory sales price violated the prohibitions of the antimonopoly statute sec. 2 (a), 49 Stat. 1526), and when it was justified by a competitor's legal price.[1]

The disadvantage to business of this choice was that the seller could not be positive before the Commission acted as to precisely how far he might go in price discrimination to meet and beat his competition. The Commission acted on its interpretation of the act.[2] Believing it important to support the purpose of Congress and the Commission's interpretation of the act, with which we agree, we state our reasons.

The Court first condemns the Commission's position that meeting in good faith a competitor's price merely rebuts the prima facie establishment of discrimination based on forbidden differences in sales price, so as to require an affirmative finding by the Commission that nevertheless there may be enjoinable injury under the Robinson-Patman Act to the favored buyer's competitors. The Court then decides that good faith in meeting competition was an absolute defense for price discrimination, saying:

"On the other hand, the proviso is readily understandable as simply continuing in effect an equally absolute, but more limited, defense than that which existed under section 2 of the original Clayton Act."

Such a conclusion seems erroneous. What follows in this dissent demonstrates, we think, that Congress intended so to amend the Clayton Act that the avenue of escape given price discriminators by its meeting competition clause should be narrowed. The Court's interpretation leaves what the seller can do almost as wide open as before. See page 12 et seq., infra. It seems clear to us that the interpretation put upon the clause of the Robinson-Patman Act by the Court means that no real change has been brought about by the amendment.

The public policy of the United States fosters the free-enterprise system of unfettered competition among producers and distributors of goods as the accepted method to put those goods into the hands of all consumers at the least expense.[3] There are, however, statutory exceptions to such unlimited competition.[4] Nondiscriminatory pricing tends to weaken competition in that a seller, while otherwise maintaining his prices, cannot meet his antagonist's price to get a single order or customer. But Congress obviously concluded that the greater advantage would accrue by fostering equal access to supplies by competing merchants or other purchasers in the course of business.[5]

The first enactment to put limits on discriminatory selling prices was the Clayton Act in 1914 (38 Stat. 730, sec. 2). Section 11 enabled the Commission to use its investigatory and regulatory authority to handle price discrimination. Section 2 provided for the maintenance of competition by protecting the ability of business rivals to obtain commodities on equal terms. The Robinson-Patman Act moved further toward this objective. In the margin appear the applicable words of the Clayton Act followed by those of the Robinson-Patman Act. Phrased summarily for this case, it may be said that the italicized words in the Clayton Act were the source of the difficulties in enforcement that Congress undertook to avoid by the italicized words of the Robinson-Patman Act.[6]

It will be noted that unless the effect is given the Robinson-Patman amendment contended for by the Federal Trade Commission, there is little done to overcome the difficulties arising from the meeting competition clause of the Clayton Act. Formerly "discrimination in price in the same or different communities made in good faith to meet competition" was allowed as a complete defense. Now it is "made in good faith to meet an equally low price of a competitor." The Court says:

"It thus eliminates certain difficulties which arose under the original Clayton Act. For example, it omits reference to discrimination in price 'in the same or different communities * * *' and it thus restricts the proviso to price differentials occurring in actual competition. It also excludes reductions which undercut the 'lower price' of a competitor. None of these changes, however, cut into the actual core of the defense. That still consists of the provision that wherever a lawful lower price of a competitor threatens to deprive a seller of a customer, the seller, to retain that customer, may in good faith meet that lower price."

We see little difference. The seller may still, under the Court's interpretation, discriminate in sales of goods of like quantity and quality between buyers on opposite corners, so long as one gets a lower delivered price offer from another seller, no matter where located. The "actual core of the defense" remains intact.

I

Legislative history: Upon the interpretation of the words and purpose of this last addition by the Robinson-Patman Act to curbs on discrimination in trade, the narrow statutory issues in this case turn. Though narrow, they are important if trade is to have the benefit of careful investigation before regulation, attainable under the Federal Trade Commission Act but so difficult when attempted by prosecutions in courts with the limitations of judicial procedure. As an aid to the interpretation of section 2 (b), we set out applicable parts of its legislative history.

The Clayton Act created a broad exception from control for prices made in good faith to meet competition. This raised problems of which Congress was aware. In reporting on a redrafted version of S. 3154, the Senate's companion bill to the House bill that became the Robinson-Patman Act, the Senate Committee on the Judiciary, February 3, 1936, pointed out the weakness of section 2 of the Clayton Act in permitting discrimination to meet competition, and suggested a harsh remedy, the elimination of its italicized proviso in note 6 supra, without the mollifying words of section 2 (b) of the Robinson-Patman Act.[7] In March

[1] The difficulties of any other approach are illustrated by the attempt of Congress to clarify the Robinson-Patman Act. See President's veto message on S. 1008, CONGRESSIONAL RECORD, vol. 96, pt. 7, p. 8844, and conference reports, House of Representatives, 81st Cong., 1st sess., No. 1422, October 13, 1949, and 2d sess., No. 1730, March 3, 1950.

[2] Hearings before Subcommittee No. 1 of the House Committee on the Judiciary on S. 1008, 81st Cong., 1st sess., June 8 and 14, 1949, p. 61.

[3] *Associated Press* v. *United States* (326 U. S. 1, 13); *United States* v. *Line Material Co.* (333 U. S. 287, 309).

[4] E. g., Interstate Commerce Act sec. 5, 49 U. S. C. sec. 5; Communications Act of 1934; sec. 221, 47 U. S. C. sec. 221; Miller-Tydings Act, 15 U. S. C. sec. 1. And see Mason, The Current Status of the Monopoly Problem in the United States, 62 Harv. L. Rev. 1265.

[5] For a discussion of the merits of the legislation, see Adelman, Effective Competition and the Anti-Trust Laws, 61 Harv. L. Rev. 1289.

[6] Clayton Act:

"SEC. 2. That it shall be unlawful for any person engaged in commerce * * * to discriminate in price between different purchasers of commodities, * * * where the effect of such discrimination may be to substantially lessen competition, or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent * * * *discrimination in price in the same or different communities made in good faith to meet competition.* * * *"

Robinson-Patman Act:

"SEC. 2. (a) That it shall be unlawful for any person engaged in commerce, * * * to discriminate in price between different purchasers of commodities * * * where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, *or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them;* * * *

"SEC. 2. (b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, *the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown,* the Commission is authorized to issue an order terminating the discrimination: *Provided, however, That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.*"

[7] S. Rept. No. 1502, 74th Cong., 2d sess., p. 4:

"The weakness of present section 2 lies principally in the fact that: (1) It places no limit upon differentials permissible on account of differences in quantity; and (2) it permits discriminations to meet competition, and thus tends to substitute the remedies of retaliation for those of law, with destructive consequences to the central object of the bill. Liberty to meet competition which can be met only by price cuts at the expense of customers elsewhere, is in its unmasked effect the liberty to destroy competition by selling locally below cost, a weapon progressively the more destructive in the hands of the more powerful, and most deadly to the competitor of limited resources, whatever his merit and efficiency. While the bill as now reported closes these dangerous loopholes, it leaves the fields of competition free and open to the most efficient, and thus in fact protects them the more securely against inundations of mere power and size.

"Specific phrases of section 2 (a), as now reported, may be noted as follows:

"One: '* * * where either or any of the purchases involved in such discrimination are in commerce * * *.'

"Section 2 (a) attaches to competitive relations between a given seller and his several customers, and this clause is designed to extend its scope to discriminations between interstate and intrastate customers, as well as between those purely interstate. Discriminations in excess of sound economic differences involve generally an element of loss, whether only of the necessary minimum of profits or of actual costs, that must be recouped from the business of customers not granted them. When granted by a given seller to his customers in other States, and denied to those within the State, they involve the use of that interstate commerce to

the House Committee on the Judiciary made its report on the bill that became the act. Section 2 (b) was then in substantially the present form. The report pointed out the draftsmen's purpose to strengthen the laws against price discrimination, directly or indirectly, through brokerage or other allowances, services, or absorptions of costs.[8] It commented that the subsection that became section 2 (b) let a seller meet the price actually previously offered by a local competitor.[9] The language used in regard to competition in the bills and in the act seems to have been based on a recommendation of the Federal Trade Commission.[10]

The Commission had been unable to restore the desired competition under the Clayton Act, and Congress evidently sought to open the way for effective action.[11]

Events in the course of the proposed legislation in the Senate and House have pertinence. The Senate inserted the original ineffective language of the Clayton Act in its exact form in the Senate bill. In the same draft it adopted an amendment similar to the proviso ultimately enacted (CONGRESSIONAL RECORD, vol. 80, pt. 6, pp. 6426, 6435). In the House Representative PATMAN explained his view of the dangers in the original proviso.[12] It was taken out in conference.[13] The Chairman of the House managers, Mr. Utterback, before the conference report was agreed to by the House, received permission to print an explanation of his understanding of the proviso. He explained that the proviso "does not set up the meeting of competition as an absolute bar to a charge of discrimination under the bill. It merely permits it to be shown in evidence. * * * It leaves it a question of fact to be determined in each case, whether the competition to be met was such as to justify the discrimination given. * * *" The pertinent parts of the statement appear in the margin.[14]

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the burden and injury of the latter. When granted to those within the State and denied to those beyond, they involve conversely a directly resulting burden upon interstate commerce with the latter. Both are within the proper and well-recognized power of Congress to suppress."

[8] H. Rept. No. 2287, 74th Cong., 2d sess., p. 3:

"The purpose of this proposed legislation is to restore, so far as possible, equality of opportunity in business by strengthening antitrust laws and by protecting trade and commerce against unfair trade practices and unlawful price discrimination, and also against restraint and monopoly for the better protection of consumers, workers, and independent producers, manufacturers, merchants, and other businessmen.

"To accomplish its purpose, the bill amends and strengthens the Clayton Act by prohibiting discriminations in price between purchasers where such discriminations cannot be shown to be justified by differences in the cost of manufacture, sale, or delivery resulting from different methods or quantities in which such commodities are to such purchasers sold and delivered. It also prohibits brokerage allowances except for services actually rendered, and advertising and other service allowances unless such allowances or services are made available to all purchasers on proportionally equal terms. It strikes at the basing-point method of sale, which lessens competition and tends to create a monopoly."

[9] Id., p. 16:

"This proviso represents a contraction of an exemption now contained in section 2 of the Clayton Act which permits discriminations without limit where made in good faith to meet competition. It should be noted that while the seller is permitted to meet local competition, it does not permit him to cut local prices until his competitor has first offered lower prices, and then he can go no further than to meet those prices. If he goes further, he must do so likewise with all his other customers, or make himself liable to all of the penalties of the act, including treble damages. In other words, the proviso permits the seller to meet the price actually previously offered by a local competitor. It permits him to go no further."

[10] Final Report on the Chain-Store Investigation, S. Doc. No. 4, 74th Cong., 1st sess., p. 96: "A simple solution for the uncertainties and difficulties of enforcement would be to prohibit unfair and unjust discrimination in price and leave it to the enforcement agency, subject to review by the courts, to apply that principle to particular cases and situations. The soundness of and extent to which the present provisos would constitute valid defenses would thus become a judicial and not a legislative matter.

"The Commission therefore recommends that section 2 of the Clayton Act be amended to read as follows:

"'It shall be unlawful for any person engaged in commerce, in any transaction in or affecting such commerce, either directly or indirectly, to discriminate unfairly or unjustly in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States'."

This report was utilized by the House committee dealing with the proposed Robinson-Patman legislation (H. Rept. No. 2287, 74th Cong., 2d sess., pp. 3, 7).

[11] Id., p. 64: "If the discrimination is 'on account of differences in the grade, quality, or quantity of the commodity sold,' or makes 'only due allowance for difference in the cost of selling or transportation,' or is 'made in good faith to meet competition,' it is not unlawful, even though the effect 'may be to substantially lessen competition or tend to create a monopoly in any line of commerce.' Discriminatory price concessions given to prevent the loss of a chain store's business to a competing manufacturer, to prevent it manufacturing its own goods, or to prevent it from discouraging in its stores the sale of a given manufacturer's goods, may be strongly urged by the manufacturer as 'made in good faith to meet competition'." See p. 90, id.

Attention was called to this need (H. Rept. No. 2287, 74th Cong., 2d sess., p. 7): "Some the difficulties of enforcement of this section as it stands are pointed out in the [final report] of the Federal Trade Commission above referred to, at pages 63 and following."

[12] CONGRESSIONAL RECORD, vol. 80, pt. 8, p. 8235:

"Mr. Chairman, I would like to ask a question of the gentleman from Texas [Mr. PATMAN]. A great many of the industries in Ohio were very much in favor of the proviso in the Senate bill, appearing on page 4, and reading as follows:

"'*And provided further*, That nothing herein contained shall prevent discrimination in price in the same or different commodities made in good faith to meet competition.'

"I find that on page 9 of the Patman bill, beginning in line 14, there appear these words:

"'*Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor.'

"Will the gentleman explain the difference between these two proposals?

"Mr. PATMAN. If the Senate amendment should be adopted, it would really destroy the bill. It would permit the corporate chains to go into a local market, cut the price down so low that it would destroy local competitors, and make up for their losses in other places where they had already destroyed their competitors. One of the objects of the bill is to get around that phrase and prevent the large corporate chains from selling below cost in certain localities, thus destroying the independent merchants, and making it up at other places where their competitors have already been destroyed. I hope the gentleman will not insist on the Senate amendment because it would be very destructive of the bill. The phrase 'equally low price' means the corporate chain will have the right to compete with the local merchants. They may meet competition, which is all right, but they cannot cut down the price below cost for the purpose of destroying the local man.

"Mr. COOPER of Ohio. What does the gentleman's proviso mean?

"Mr. PATMAN. It means they may meet competition, but not cut down the price below cost. It means an equally low price but not below that. It permits competition, but it does not permit them to cut the price below cost in order to destroy their competitors. I hope the gentleman will not insist on the Senate amendment."

But see pp. 15 and 16, infra.

[13] H. Rept. No. 2951, 74th Cong., 2d sess., pp. 6–7:

"The Senate bill contained a further proviso 'That nothing herein contained shall prevent discrimination in price in the same or different communities made in good faith to meet competition.'

"This language is found in existing law, and in the opinion of the conferees is one of the obstacles to enforcement of the present Clayton Act. The Senate receded, and the language is stricken. A provision relating to the question of meeting competition, intended to operate only as a rule of evidence in a proceeding before the Federal Trade Commission, is included in subsection (b) in the conference text as follows:

"'*Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.'"

[14] CONGRESSIONAL RECORD, vol. 80, pt. 9, p. 9418:

"In connection with the above rule as to burden of proof, it is also provided that a seller may show that his lower price was made in good faith to meet an equally low price of a competitor, or that his furnishing of services or facilities was made in good faith to meet those furnished by a competitor. It is to be noted, however, that this does not set up the meeting of competition as an absolute bar to a charge of discrimination under the bill. It merely permits it to be shown in evidence. This provision is entirely precedural. It does not determine substantive rights, liabilities, and duties. They are fixed in the other provisions of the bill. It leaves it a question of fact to be determined in each case, whether the competition to be met was such as to justify the discrimination given, as one lying within the limitations laid down by the bill, and whether the way in which the competition was met lies within the latitude allowed by those limitations.

"This procedural provision cannot be construed as a carte blanche exemption to violate the bill so long as a competitor can be shown to have violated it first, nor so long as that competition cannot be met without

II

Statutory interpretation: This résumé of the origin and purpose of the original section 2 of the Clayton Act and the amendments of the Robinson-Patman Act gives a basis for determining the effect of this section in a hearing before the Commission where the charge, as here, that a seller during the same period of time has sold the same commodities to various purchasers at different prices, is admitted and the defense, the elements of which are likewise admitted, is that the discrimination was made in good faith to meet an equally low price of a competitor. Does meeting in good faith a competitor's price constitute a complete defense under the proviso to section 2 (b)? Or does the fact of good-faith reduction in price to a purchaser to meet a competitor's price merely rebut the prima facie establishment of discrimination, arising under the statute from proof of forbidden differences in price,[15] so as to require under section 2 (a) affirmative finding by the Commission that there may be injury to competition? Petitioner asserts that good-faith meeting of a competitor's price is a complete defense. The Commission and the court of appeals take the opposite position, with which we concur.

This is our reason: The statutory development and the information before Congress concerning the need for strengthening the competitive-price provision of the Clayton Act, make clear that the evil dealt with by the proviso of section 2 (b) was the easy avoidance of the prohibition against price-discrimination. The control of that evil was an important objective of the Robinson-Patman Act. The debates, the Commission's report and recommendation, and statutory changes show this. The conference report and the explanation by one of the managers, Mr. Utterback, are quite definitive upon the point. Because of experience under the Clayton Act, Congress refused to continue its competitive-price proviso. Yet adoption of petitioner's position would permit a seller of nationally distributed goods to discriminate in favor of large-chain retailers, for the seller could give to the large retailer a price lower than that charged to small retailers, and could then completely justify its discrimination by showing that the large retailer had first obtained the same low price from a local low-cost producer of competitive goods. This is the very type of competition that Congress sought to remedy. To permit this would not seem consonant with the other provisions of the Robinson-Patman Act, strengthening regulatory powers of the Commission in quantity sales, special allowances and changing economic conditions.

The structure and wording of the Robinson-Patman amendment to the Clayton Act also conduce to our conclusion. In the original Clayton Act, section 2 was not divided into subsections. In that statute, section 2 stated the body of the substantive offense, and then listed, in a series of provisos, various circumstances under which discriminations in price were permissible. Thus the statute provided that discriminations were not illegal if made on account of differences in the grade of the commodity sold, or differences in selling or transportation costs. Listed among these absolute justifications of the Clayton Act appeared the provision that "nothing herein contained shall prevent discrimination in price * * * made in good faith to meet competition." The Robinson-Patman Act, however, made two changes in respect of the "meeting competition" provision, one as to its location, the other in the phrasing. Unlike the original statute, section 2 of the Robinson-Patman Act is divided into two subsections. The first, section 2 (a), retained the statement of substantive offense and the series of provisos treated by the Commission as affording full justifications for price discriminations; section 2 (b) was created to deal with procedural problems in Federal Trade Commission proceedings, specifically to treat the question of burden of proof. In the process of this division, the "meeting competition" provision was separated from the other provisos, set off from the substantive provisions of section 2 (a), and relegated to the position of a proviso to the procedural subsection, section 2 (b). Unless it is believed that this change of position was fortuitous, it can be inferred that Congress meant to curtail the defense of meeting competition when it banished this proviso from the substantive division to the procedural. In the same way, the language changes made by section 2 (b) of the Robinson-Patman Act reflect an intent to diminish the effectiveness of the sweeping defense offered by the Clayton Act's "meeting of competition" proviso. The original provisos in the Clayton Act, and the provisos now appearing in section 2 (a), are worded to make it clear that nothing shall prevent certain price practices, such as "price differentials * * * [making] * * * due allowance for differences in the cost of manufacture * * *," or "price changes * * * in response to changing conditions affecting the market for * * * the goods concerned * * *." But in contrast to these provisions, the proviso to section 2 (b) does not provide that nothing "shall prevent" a certain price practice; it provides only that "nothing shall prevent a seller rebutting * * * [a] * * * prima facie case by showing" a certain price practice—meeting a competitive price. The language thus shifts the focus of the proviso from a matter of substantive defense to a matter of proof. Consistent with each other, these modifications made by the Robinson-Patman Act are also consistent with the intent of Congress expressed in the legislative history.

The Court suggests that former Federal Trade Commission cases decided here have treated the meeting-competition clause of the Robinson-Patman Act as being an absolute defense, not merely a rebuttal of the discrimination charge requiring further finding by the Commission. Reference is made to *Corn Products Refining Co.* v. *Federal Trade Comm'n* (324 U. S. 726), and *Federal Trade Comm'n* v. *Staley Mfg. Co.* (324 U. S. 746). In the Corn Products case, dealing with a basing-point scheme for delivered prices, this Court merely said at page 741:

"The only evidence said to rebut the prima facie case made by proof of the price discriminations was given by witnesses who had no personal knowledge of the transactions, and were limited to statements of each witness' assumption or conclusion that the price discriminations were justified by competition."

And then went on to use the language quoted at page 12 of the Court's opinion. There was no occasion to consider the effect of a successful rebuttal. As authority for its statement, we there cited the Staley case at 324 United States 746.

That citation included these words at pages 752–753:

"Prior to the Robinson-Patman amendments, section 2 of the Clayton Act provided that nothing contained in it shall prevent discriminations in price made in good faith to meet competition. The change in language of this exception was for the purpose of making the defense a matter of evidence in each case, raising a question of fact as to whether this competition justified the discrimination. See the conference report, House Report No. 2951, Seventy-fourth Congress, second session, pages 6–7; see also the statement of Representative Utterback, the chairman of the House conference committee, CONGRESSIONAL RECORD, volume 80, part 9, page 9418."

After that statement, which it should be noted relies upon Mr. Utterback's interpretation quoted at note 14 of this opinion, the court in the Staley case goes on to say that there was no evidence to show that Staley adopted a lower price to meet an equally low price of a competitor. Again there was no occasion for this court to meet the present issue. We think our citation in Staley, quoted above, shows the then position of this court.[16]

There are arguments available to support the contrary position. No definite statement appears in the committee reports that meeting competition is henceforth to be only a rebuttal of a prima facie case and not a full justification for discrimination in price. The proviso of section 2 (b) can be read as having the same substantive effect as the provisos of section 2 (a). The earlier provisos are treated by the Commission as complete defenses. Perhaps there is an implication favorable to the petitioner's position in Representative PATMAN'S omission to state the Federal Trade Commission interpretation on the floor. See note 12, supra.

The underlying congressional purpose to curtail methods of avoiding limitations on price discriminations, however, considered with the more specific matters discussed herein, satisfies us that we should adopt the conclusion of the Commission and the Court of Appeals.[17] We believe that good faith meeting of a competitor's price only rebuts the prima facie case of violation established by showing the price discrimination. Whether the proven price discrimination is of a character that violates section 2 (a) then becomes a matter for the determination of the Commission on a showing that there may be injury to competition.

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the use of oppressive discriminations in violation of the obvious intent of the bill.

* * * * *

"If this proviso were construed to permit the showing of a competing offer as an absolute bar to liability for discrimination, then it would nullify the act entirely at the very inception of its enforcement, for in nearly every case mass buyers receive similar discriminations from competing sellers of the same product. One violation of law cannot be permitted to justify another. As in any case of self-defense, while the attack against which the defense is claimed may be shown in evidence, its competency as a bar depends also whether it was a legal or illegal attack. A discrimination in violation of this bill is in practical effect a commercial bribe to lure the business of the favored customer away from the competitor, and if one bribe were permitted to justify another the bill would be futile to achieve its plainly intended purposes."

[15] See note 6, supra.

[16] The court's opinion in this case refers, p. 12, notes 12 and 13, to the opinions of the Court of Appeals for the Seventh Circuit in *Staley* and *Corn Products* (144 F. 2d 211 and 221). But that court reversed its position in the opinion below (178 F. 2d 210, 216). It is fair to assume that reversal was because of our opinions in Corn Products and Staley.

[17] It is hardly necessary to note that the wisdom of the enactment is not for the Commission nor the courts in enforcing the act. The Commission recently has advised Congress that while "on balance it would be preferable to make the good faith meeting of competition a complete defense," it "does not strongly urge either view upon the Congress." Hearings before Subcommittee No. 1 of the House Committee on the Judiciary on S. 1008, Eighty-first Congress, first session, June 8 and 14, 1949, p. 61. Compare *Standard Oil Co.* v. *United States* (337 U. S. 293, 311). This statement confirmed the Commission's position taken in this case. There were other officials of the Commission who have taken the view adopted by the Court.

III

Conclusion: In view of the Court's ruling, we will not enlarge this dissent by discussing other problems raised by the case. We have said enough to show that we would affirm the decree below in principle, even though we should conclude some amendment might be required in the wording of the order.

The Chief Justice and Mr. Justice Black join in this dissent.

Mr. LONG. If the Senator from Colorado wishes to make the insertion requested by the Senator from Illinois, the junior Senator from Louisiana will not object. However, that decision has already been put in the RECORD previously, and the decision is also in the committee hearings, which are on the desks of all Senators. Therefore the junior Senator from Louisiana would suggest that it is really unnecessary.

Mr. JOHNSON of Colorado. With all the questions arising with respect to it, I think it should go into the RECORD again so that Senators may be informed as to what the case amounts to.

Mr. LONG. Mr. President, will the Senator yield further?

Mr. JOHNSON of Colorado. I cannot yield. I want to finish my speech.

The PRESIDING OFFICER. The Senator declines to yield.

Mr. JOHNSON of Colorado. Another opponent of Senate bill 1008 argued it would permit one steel company to cut its prices by 50 percent in a local market and put the small competitor out of business if it could just get another big steel company to also cut prices by 50 percent.

The pending bill meets that objection to Senate bill 1008. It would not permit one seller to violate the law even though he can find another law violator. Now this bill is condemned for that very reason.

THE VETO OF S. 1008

I was, of course, disappointed that the President found the provisions of Senate bill 1008 confusing and not clarifying. But it should be noted that he expressly approved the purposes of the bill.

The President said that the sponsors of Senate bill 1008 had intended "the protection of fair competition and the prevention of monopoly." That is what the supporters of Senate bill 1008 said on the floor of the Senate, and that is what was said in the House. The veto message is clear that the President supported the purposes intended by the sponsors of Senate bill 1008.

The President gave as his reason for the veto that "this bill, however, as it finally emerged from the legislative process, is so far from clear that each of its larger provisions is capable of widely conflicting interpretations." This was apparently a reference to amendments offered to Senate bill 1008 by its opponents.

The President also said that some of the provisions of that bill might require extended litigation for their interpretation and might ultimately be interpreted to impair the effectiveness of the antitrust laws.

The pending bill meets all those objections to S. 1008. There are no new or uncertain words in the pending bill. The phrases used are all contained in the present law and have been interpreted and construed by the Supreme Court in the Standard Oil case. Protracted litigation will not be required to construe this legislation, for the language used is the language of the Supreme Court in the Standard Oil case.

There can be no fear of a weakening of the antitrust laws, for, as the Supreme Court majority opinion so eloquently points out, the effect of this construction of the law is to protect competition and prevent monopoly.

BASING-POINT SYSTEM

Let me say emphatically that the bill does not in any way relate to basing-point systems. It does not by any stretch of the imagination legalize basing-point systems. It applies only to competition and good faith meeting of competitor's lower prices. The Supreme Court decisions holding basing-point systems illegal will not be changed by the passage of the bill.

No decision of the Supreme Court, Mr. President, will be changed by the passage of the bill.

CONSPIRACY

It is also plain that the bill will not permit sellers to conspire to fix prices. The Supreme Court held in the Cement Institute case that sellers were not in good faith when they were in conspiracy, and this bill applies only to good faith competition. The Cement Case was expressly followed by the Court in the Standard Oil case.

THE HIGH COST OF LIVING

Of principal concern to every Member of Congress is the current high cost of living. It appears to be getting higher every day. My mail, as is the mail of every Member of Congress, is burdened with pleas for lower prices.

Legislative controls are not the entire answer to keeping prices down. Price controls are ceilings above which prices cannot go, but it is in the public interest that wherever possible prices be below the permissible ceilings. Only through vigorous competition can we hope to keep the cost of living down. This bill does not permit a seller to undercut his competitor. But it would increase the number of competitors competing for each buyer's business. This competition would certainly tend to keep prices down.

It is hypocrisy for us to pass control bills to keep down the cost of living and then to prohibit businessmen from engaging in competition to give the consumer better goods at lower prices. We will be backing up price control legislation by the enactment of this legislation, for it will encourage businessmen to engage in good faith competition. Competition will certainly continue to increase the standard of living for our people by reducing the cost of the goods they must purchase. For once, let us give the consumers a break.

CONCLUSION

The purpose of the bill is solely to permit sellers to meet the lower prices which their competitors are lawfully offering to their customers, and thus to permit them to engage in competition. A vote for the bill is a vote for free competition. The Supreme Court has said that it is not possible to protect the individual competitors against injury without in effect prohibiting competition. Therefore a vote against the bill is a vote to prohibit free competition. The pending bill, in the language of a Supreme Court decision dealing with this precise subject, would protect competition and prevent monopoly. I do not see how any Senator can possibly vote against the bill.

Mr. DOUGLAS. Mr. President, will the Senator yield for a question?

Mr. JOHNSON of Colorado. Not in my time.

Mr. KEFAUVER. Mr. President, I yield time to the Senator from Illinois to ask the Senator from Colorado a question.

Mr. DOUGLAS. I thank the Senator from Tennessee.

Am I correct in my understanding that the purpose of the bill is that a discrimination will become legal if it is made in good faith to meet the equally low price of a competitor?

Mr. JOHNSON of Colorado. If a competitor sets a lower price, the other competitor can meet that price.

Mr. DOUGLAS. And that is the so-called good-faith defense, and it is to be a complete defense?

Mr. JOHNSON of Colorado. That is, if the original lower price was made lawfully and legally, then the opposing businessman can meet that price. That is the object of the bill.

Mr. DOUGLAS. Does the Senator from Colorado say that the defense of so-called good faith will then be complete, even though the effect of the discrimination is to reduce, restrict, lessen, or abolish competition—that, no matter what the effect may be, it is to be a complete defense if the discrimination is made in good faith?

Mr. JOHNSON of Colorado. It will not destroy competition.

Mr. DOUGLAS. Reduce, lessen, or restrict competition.

Mr. JOHNSON of Colorado. Those are the words of the Senator from Illinois. The effect will be to improve competition.

Mr. DOUGLAS. Would the Senator accept an amendment which would permit discrimination in good faith, provided it did not restrict, reduce, or lessen competition?

Mr. JOHNSON of Colorado. Of course not, because that would destroy the bill.

Mr. DOUGLAS. Does the Senator mean to say that he wants to have the act lessen competition. That is very damaging confirmation if made.

Mr. JOHNSON of Colorado. I mean it would destroy the bill because there cannot be competition without injuring someone. It is not possible. Of course someone will be injured.

Mr. DOUGLAS. The question is whether it would injure the competitive system. Under the competitive system, competitors may be injured by lower prices, but that does not injure the competitive system, because new businesses spring up. There are deaths in the competitive system, but the life of the system continues through a struggle on the basis of efficiency. But that struggle

should be made on the basis of comparative efficiency and not through price discriminations which the big buyers obtain but which their small competitors are denied.

Mr. KEFAUVER. Mr. President, will the Senator yield?

Mr. DOUGLAS. I yield.

Mr. KEFAUVER. If the Senator from Colorado is not willing to accept an amendment which would provide that one may cut prices provided it does not do harm to the competitive system or create a monopoly, would it not appear that the Senator is endeavoring to effect the lessening of competition or the creation of a monopoly?

Mr. DOUGLAS. I do not want to ascribe any such motive to the Senator from Colorado, of whom I have a very high opinion but apparently it would seem that the effect of this bill will be to restrict and reduce competition.

Mr. KEFAUVER. That is what I mean; the effect of it will be to reduce and restrict competition.

Mr. DOUGLAS. Yes; the effect will be to reduce, restrict, or lessen competition. If the effect is not to do that, then I think the Senators on the other side would welcome such an amendment.

Mr. JOHNSON of Colorado. Will the Senator permit me to say why the Senator from Colorado is opposed to amending Senate bill 719?

Mr. KEFAUVER. If I have the floor, I will gladly yield for that purpose.

Mr. WHERRY. Mr. President, I shall be glad to yield five more minutes to the Senator from Colorado to make his statement.

Mr. JOHNSON of Colorado. Mr. President, I want only one more minute. Senate bill 719 is an attempt to write into law the Supreme Court decision in the Standard Oil case. The Senator from Colorado is opposed to going beyond that finding of the Supreme Court, because the Senator from Colorado is endeavoring to obtain clarity. The Senator from Colorado has been seeking clarity in this matter for 3 years, and it seems to me that Senate bill 719 affords the opportunity to establish the correct principle and to make the law so plain that businessmen, industry, and everyone will know exactly what it is. In the interest of clarity, stability, and knowledge of this very technical and difficult subject, the Senator from Colorado hopes that Senate bill 719 will not be amended in any particular or in any degree.

Mr. KEFAUVER. Mr. President, will the Senator from Colorado yield so that I may ask him a question?

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Tennessee?

Mr. JOHNSON of Colorado. I do not have the floor.

Mr. KEFAUVER. If I then may ask the Senator from Colorado the question in my own time, I shall do so. Does not the Senator concede that the pending bill goes beyond the Supreme Court opinion in the Standard Oil case in three or four respects?

Mr. JOHNSON of Colorado. I do not think so. I do not think it goes beyond the case.

Mr. KEFAUVER. In respect, No. 1: The Standard Oil decision was delivered on the basis of a case involving the reducing of a price to retain a customer, whereas the bill, the report and the statement of the Senator from Maryland [Mr. O'CONOR] show that it is the intention by the bill not to retain a customer but to grab somebody else's customer. Does not the Senator from Colorado agree that that goes beyond the decision in the Standard Oil case?

Mr. JOHNSON of Colorado. I think those are a lot of picayunish arguments that are absolutely meaningless in the business world.

Mr. KEFAUVER. Is there not a great deal of difference, I ask the Senator from Colorado, between reducing a price to retain an old customer and reducing a price to get somebody else's trade?

Mr. JOHNSON of Colorado. If the Senator were ever in business he would not find so much difference between them. I am sure the Senator's observation must stem from a lack of knowledge of buying and selling. I cannot attribute any other reason to this very picayunish question.

Mr. KEFAUVER. Regardless of the importance of the matter, the Senator will agree, will he not, that the bill goes beyond the decision of the Supreme Court in that regard?

Mr. JOHNSON of Colorado. No; I do not. I presume that the Supreme Court meant, of course, that when a businessman is meeting the price of a competitor that he is not simply tying yourself down to some customer who may have bought a nickel's worth of chewing gum at one time or another. I think the opinion must be accepted in its broadest sense. I do not think it can be narrowed down by saying that a seller will offer one price to a former customer and will refuse to offer that price to a prospective customer. I think that is totally silly.

Mr. KEFAUVER. Anyway the decision was on the basis of lowering a price to retain a customer.

Mr. JOHNSON of Colorado. The decision was on that basis because the Court was talking about a specific case. The decision was tied down to a specific case. Certainly the Senator from Tennessee knows that the Court was not deciding the whole great question on the basis of any one particular case. The Court had to pass on a case, and that is why that point was raised.

Mr. KEFAUVER. The second point is this. I ask the Senator if the bill does not go further than the Supreme Court decision, in that the Supreme Court decision was based on a suit between a governmental agency, the Federal Trade Commission, and the Standard Oil Co. Section 4 of the Clayton Act gives a private individual the right to sue for triple damages when he is discriminated against unlawfully. The bill not only would take away the right of the Government to try to prevent that sort of competiton, but it also would affect the private interest under section 4 of the Clayton Act. Is that not correct?

Mr. JOHNSON of Colorado. Of course, it does none of the things the Senator says it does. And if it does do these horrible things the Senator says it does, it at least is doing something in the public interest. It is in the public interest that a businessman be permitted to meet the lawful price of a competitor. That is all the bill does. It permits him to meet the lawful price of a competitor. If that amends all the laws in the code the Senator from Colorado is unable to reply to the Senator from Tennessee, because the Senator from Colorado is not a lawyer, and he cannot follow through these things and find out how many laws it changes. I do not believe it changes any law.

Mr. KEFAUVER. The Senator does concede then that it does affect the right of private persons to bring suits under section 4? I take it the Senator from Colorado concedes that.

Mr. JOHNSON of Colorado. The bill permits a businessman to meet the price of his competitor if that price is made lawfully and legally. For the life of me, I cannot see anything wrong about that. If the Senator sees something terrible about that, of course, that is something I do not understand.

Mr. KEFAUVER. There must be some reason for giving a private individual the right to sue for triple damages. That was not involved in the Standard Oil Co. case. Yet in the pending bill that right would be taken away from him. That is the point.

Mr. JOHNSON of Colorado. Does the Senator from Tennessee think if a businessman meets the lower price of a competitor, which price is legal, that then somebody should be allowed to sue him and recover triple damages because he has met that lawful, legal price of a competitor? Is that what the Senator from Tennessee is driving at?

Mr. KEFAUVER. If a large buyer purchases a great quantity of material from a seller, who sells the material to him at a price 20 percent below the price of the seller's competitor, discriminating against him in that way, and putting his competitor out of business, I think it is very important that the competitor should have the right to bring suit under section 4 of the Clayton Act, because he has been put out of business by the unlawful discrimination. Does the Senator from Colorado concede that the bill changes the burden of proof so that the Federal Trade Commission, under the provisions of the bill, will have not only the burden of proving a discrimination, but also of proving that the purchaser acted in bad faith?

Unless the Senator wants to retain the floor further, I will yield to the Senator from Michigan [Mr. MOODY].

Mr. WHERRY. Mr. President, I understood the distinguished Senator from Tennessee was asking questions of the Senator from Colorado in his own time.

Mr. KEFAUVER. In my own time; yes.

Mr. WHERRY. The Senator from Tennessee has the floor, has he not?

Mr. KEFAUVER. Yes.

Mr. WHERRY. I should like to yield to another Senator when I am permitted to yield, who wishes to speak in favor of the bill.

Mr. KEFAUVER. Mr. President, I told the Senator from Michigan [Mr.

MOODY] that I would yield to him immediately after the Senator from Colorado had concluded his speech.

Mr. HUMPHREY. Mr. President, will the Senator from Tennessee yield to me for a moment in order that I may ask a question?

Mr. KEFAUVER. I was going to yield to the Senator from Michigan [Mr. MOODY]. I yield 25 minutes to the Senator from Michigan.

Mr. WHERRY. Mr. President, I wonder if it is mandatory that the Senator from Michigan speak now? I should very much appreciate it if the distinguished Senator from Michigan would permit the Senator from Ohio [Mr. BRICKER] to speak for 15 minutes at this time. However, if there is some reason why the Senator from Michigan would not like to yield for that purpose, I shall not insist. I should very much appreciate it if the Senator from Michigan would permit the Senator from Ohio to speak at this time.

Mr. MOODY. I am glad to yield so the Senator from Ohio may speak now.

Mr. BRICKER. Mr. President, I thank the Senator from Michigan and the Senator from Nebraska.

I desire to discuss briefly the bill pending before the Senate, to clarify some of the objections which have been made to the bill, and to make my own position perfectly clear respecting it.

Mr. President, Senate bill 719 involves two problems of pricing which are separate and distinct. The freight-absorption bill, passed by the Eighty-first Congress and vetoed by the President, involved these same two pricing problems. These two problems were hopelessly intermingled and confused in the Senate debate of last year on S. 1008.

The first problem to which I refer is that considered by the Supreme Court in the *Standard Oil case* (340 U. S. 231 (1951)). The second problem concerns the legality of good-faith freight absorption. These two problems have nothing in common apart from the fact they are both affected by the following language of S. 719:

> It shall be a complete defense to a charge of discrimination in price or services or facilities furnished for the seller to show that his differential in price * * * was made in good faith to meet the equally low price of * * * a competitor.

This language confirms the decision of the Supreme Court in the Standard Oil case, a case which had nothing to do with the legality of freight absorption. Although nonconspiratorial freight absorption is also made in good faith to meet the equally low price of a competitor, the Supreme Court in the Standard Oil case did not remove the doubt on the legality of freight absorption arising from its decision in the *Cement case* (333 U. S. 683). The language of S. 719 legalizes freight absorption when interpreted in the light of the committee report and other evidence of legislative intent. In legalizing good faith freight absorption, S. 719 would remove the doubt placed on that method of pricing in the Cement and Rigid Steel Conduit cases involving an entirely different competitive situation than that considered by the Court in the Standard Oil case.

The objections of small business to S. 719 all relate to the Standard Oil situation. Some independent retailers feel that they are placed at an unfair disadvantage in competing with wholesale-retailers who are able to buy from suppliers for a lower price. At the same time, the dilemma of the seller in the Standard Oil situation must be recognized. If a seller tries to fix prices at the retail level, he is subject to prosecution by the Department of Justice under the antitrust laws. If a seller, in meeting the price of competitors in sales to wholesalers, thereby permits wholesale-retailers to gain an advantage over independent retailers, the Federal Trade Commission, prior to the Standard Oil case, could proceed against him under the Robinson-Patman Act.

Mr. President, I am not prepared to say whether or not the Court's decision in the Standard Oil case should be accepted as the permanent solution for the dilemma of sellers in the shoes of Standard Oil. It may be that the rule of the recent Standard Oil case should be changed to protect retailers who may be injured by the meeting of competition in good faith at another level of distribution. Obviously, something had to be done to protect sellers from being prosecuted either by the Department of Justice or by the Federal Trade Commission regardless of how they acted. Equally obvious is the fact that the Court was confronted in the Standard Oil case with an extremely complex pricing problem. It is not one which can be resolved intelligently on the floor of the United States Senate.

In my opinion, it would be wise to hold further hearings on the effect of the Standard Oil case on independent small business.

Mr. KEFAUVER. Mr. President, will the Senator yield?

Mr. BRICKER. No; I decline to yield. My time is limited. The Senator can make his comments afterward in his own time.

Mr. KEFAUVER. I shall be glad to yield time to the Senator.

Mr. BRICKER. That is no reason, however, for voting against the pending bill or for its recommital. In either event, the Standard Oil case would continue to be the law of the land. If independent small business is prejudiced by that decision, relief must come by way of legislative reversal or modification of the Court's decision. In my judgment, the problem is too intricate to be resolved finally on the Senate floor without the benefit of hearings. Inasmuch as S. 719 merely affirms existing law so far as the Standard Oil situation is concerned, its passage will not prejudice small business.

I turn now, Mr. President, to the freight-absorption side of S. 719. No one can claim that the Congress and its committees have not exhaustively considered all phases of this problem. It is my opinion that the legalization of freight absorption is vitally necessary to the welfare of American business, particularly small business. For that reason, I intend to vote for S. 719. Even assuming that some change in the doctrine of the Standard Oil case may be required, passage of S. 719 will not injure small business since the Standard Oil case will remain the law of the land until reversed or modified by the Congress.

The undisputed right of business to absorb freight to meet the equally low price of a competitor must be recognized without further delay. While all business is adversely affected by the confusion which now prevails, small business is prejudiced to a far greater extent than big business. The campaign of the Federal Trade Commission against freight absorption has had the following consequence which are much more damaging to small business than to big business:

First. Uncertainty: Before congressional committees the Federal Trade Commission has argued that it does not wish to make freight absorption illegal per se. Before the courts, the Commission has argued that individual and independent freight absorption is illegal per se. That argument was accepted in the *Rigid Steel Conduit case* by a circuit court of appeals (168 F. (2d) 175) and affirmed by an evenly divided Supreme Court. The only definite rule announced by the Commission is that industry-wide f. o. b. mill pricing is the only safe method which can be employed.

In many industries the requirement of f. o. b. mill pricing would creat a series of local monopolies. This would be true in every industry producting standardized or fungible commodities where freight is a substantial element of cost. A purchaser of cement, for example, will not pay one cent more for the cement of one manufacturer than the identical cement sold by another. Under industry-wide f. o. b. mill pricing, many buyers are compelled to buy from the nearest producer freightwise. In many industries the requirement of f. o. b. mill pricing has the practical effect of allocating to each producer a trade territory which cannot be invaded by outside competitors unable to absorb freight. Any pricing method which has a tendency to allocate trade territory is clearly illegal under the Sherman Antitrust Act, the policies of Federal Trade Commission to the contrary notwithstanding. The Commission's geographical pricing theories have placed thousands of sellers between Scylla and Charybdis.

Recently, another arm of the Government has entered the pricing picture. The Office of Price Stabilization has issued orders requiring freight absorption. CPR 49, for example, requires all producers of wood pulp to engage in the type of freight absorption which the Federal Trade Commission is trying to outlaw.

In the midst of all this uncertainty and confusion, it seems obvious that small business is injured more than large companies. They simply do not have the money to hire full-time counsel to chart their course between conflicting regulations and to represent them in extensive litigation.

Second. Artificial restriction of trade territory: Inability to absorb freight confines many sellers to the area in which they have a freight advantage over competitors. A small manufacturer

may find himself limited to a trade territory too small to support his business. A large company confronted by the same problem can avoid the effect of the ban on freight absorption by establishing branch plants or branch warehouses. The capital required to establish branch plants or branch warehouses cannot be raised by the vast majority of small business enterprises.

Third. Discrimination against sparsely populated areas: The prohibition against freight absorption operates most harshly in those sections of the United States which are removed from large metropolitan centers of consumption. In most cases, it is the small business enterprise which has located in small towns at a considerable distance from its principal market. Many small towns are dependent on the economic health of these small businesses. There are a number of reasons for locating an industry in a small town even though it is at a freight disadvantage in competing in metropolitan areas. The industry might have been located in a sparsely settled area because of lower labor costs, cheaper power, or proximity to raw materials. Because of these cost advantages, many businesses were located in reliance on the fact that their freight cost disadvantage could be absorbed in order to compete in distant, populous markets. If these small businesses in the small towns of sparsely settled areas are not given a clear right to absorb freight, they face a bleak future.

Fourth. Inability to combat monopoly: Inability of sellers to absorb freight will compel thousands of small-business men to buy only from the nearest seller freight-wise or to pay higher prices in buying from more distant sellers. Opportunities for price-gouging and poor service are the inevitable by-products of all unregulated monopolies. It is obvious that any large business is far better able to fight a monopoly than small business.

The ability to absorb freight in good faith to meet the equally low price of a competitor is far more important to small business than big business. In support of this conclusion, I ask unanimous consent to have printed at the conclusion of my remarks an article by Mr. Harold Fleming which appeared in the Christian Science Monitor on July 3, 1951.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BRICKER. Finally, Mr. President, I want it to be clearly understood that passage of S. 719 is no panacea for ills which beset small business today. Confiscatory taxation—individual, corporate, and estate—is preventing the formation of new small-business enterprises and forcing thousands of others out of business either by way of merger or bankruptcy. Small business is threatened in the very near future with mass liquidation through taxation, reckless Federal spending, unsound policies of military procurement, maladministration of the Defense Production Act, and the grab for power over business by almost every department and agency of the Federal Government. The administration makes a pretense of aiding small business by lending money to a favored few and promising to distribute defense contracts on an equitable basis. Nevertheless, it is becoming clearer each day that the Truman administration is the worst enemy small business has ever had.

I yield the floor.

EXHIBIT 1

BASING-POINT ISSUE SEEN HARD ON SMALL FIRMS

(By Harold Fleming)

NEW YORK.—Some business executives here, following the fortunes of this year's bill in Congress to relegitimize freight absorption as a form of good faith competition, are inclined to feel that opponents of the bill mistake form for substance.

Thus, for instance, these executives say that "in speaking for little business against the bill these politicians run the risk of helping little business in the same way the Iranian Nationalists are helping Iran."

The present ban on freight absorption, as pointed out in a previous article, affects businesses primarily by location rather than by size. Thus it benefits little producing firms who have regional or geographical monopolies, but hurts little producing firms who are in net-exporting regions as to their product and depend for markets on long freight hauls.

A number of the latter type of medium-sized firms testified before congressional committees in recent years that they would be hard hit if freight absorption remained illegal and if they were thus prevented from using their natural producing advantages to offset their geographical handicaps by absorbing freight costs. Among them were a soda ash plant in Wyoming, a pulp mill in Maine, and the Colorado beet-sugar people.

Comparatively small producers in net exporting areas face another disadvantage if deprived of the right to absorb freight to net consuming markets—a disadvantage which seems not to have occurred to the enemies of freight absorption. Smaller one-plant companies can't move so easily as bigger multiplant companies.

WHOLE QUESTION CLOUDED

It is not safe to say that freight absorption has been banned. Nor is it safe to say that it is legitimate. The whole question is clouded. Thus, within a year after the Supreme Court's Cement decision, Federal Trade Commissioner Mason said explicitly that "Freight absorption is out the window," and FTC Commissioner Freer said that freight absorption "is not out the window." Senator JOHNSON told the Senate on January 5, 1949, that "not only are businssmen confused, but members of the Federal Trade Commission and its staff are in complete disagreement as to when a seller may pay or absorb freight costs."

At that time the FTC people were saying "Wait till the Rigid Conduit case is decided." In its brief to the court of appeals in the Conduit case the Commission said "Count 2 * * * [is] frankly directed against the basing-point practice as being, per se, an unfair method of competition, even though not predicated on combination or conspiracy." The FTC won the case. But 4 months after the final decision FTC Chairman Freer said publicly that "* * * basing-point and delivered-price systems, as such, are under no special attack." And a month after that another FTC Commissioner told a Senate committee that "the Commission has not in a single case challenged the use of the basing-point method of pricing per se separate and apart from collusion."

"BIGS" CAN ADJUST BETTER TO UNCERTAINTY

Congress apparently concluded, as many businessmen have, that the FTC's right hand does not seem to know what its left hand is doing. But, as President Wilson wrote to Congress in his first message which led to the creation of the FTC, "Nothing hampers business like uncertainty. Nothing daunts or discourages it like the necessity to take chances, to run the risk of falling under the condemnation of the law before it can make sure just what the law is."

Meantime, however, a new angle has appeared in the situation. Big companies, it appears, can adjust to the new uncertainty better than little ones.

Thus in hearings before the Joint Congressional Committee on the Economic Report, in December 1949, Senator Francis J. Myers, of Pennsylvania, asked President Fairless, of the United States Steel Corporation—

"MYERS. It seems to me that although United States Steel can purchase thousands of acres near Philadelphia to build a new plant, there are many small industries, small steel companies, small fabricators, that could not afford to do that; and if they cannot absorb freight, they have no recourse; they cannot move to another area; is that not so?"

SEES CLARIFICATION NEEDED

"FAIRLESS. That is right, Senator, I think the United States Steel Corp. * * * can take care of itself under any reasonable competitive condition that is provided.

"MYERS. Because of the nature and type of your corporation, but there are many small companies, small businesses, that I understand are in a very bad way at the present time because they are confused as to whether or not they can legally absorb freight.

"FAIRLESS. That is right, and the problem certainly needs some clarification."

This was not the first time a Big Steel man had said the same. In 1936 the then president of the corporation, testifying on a bill which the Federal Trade Commission was then urging on Congress to ban freight absorption, said in part, "The change, as suggested by the proposed law, would be least harmful to us of any in the industry, because of our plant locations in the various parts of the country, and, in my opinion, would be of benefit to the Steel Corp." (Printed hearings before Senate Commerce Committee on S. 4055, 74th Cong., pp. 587-588.)

Nor is steel the only industry where a ban on freight absorption might help the bigs against the littles. In 1948 the FTC ordered the corn-products industry to quit basing prices on geographical points. Eight companies in the industry, with the biggest company (Corn Products Refining) significantly silent, replied legally that "with uniform f. o. b. pricing, Corn Products will have an insuperable advantage over its * * * competitors [and] would have a virtual monopoly thrust upon it. * * * [It will] have the plant which is farthest north, west, south, and east * * * the lowest freight rates to most markets."

ADVANTAGES IN BRANCH WAREHOUSES

This big-company advantage from a ban on freight absorption is also indicated in the matter of branch warehouses. Some FTC lawyers have indicated that if producers are prohibited from paying freight to distant markets, they can perhaps get around this by merely building or buying branch warehouses near their hoped-for markets. This, however, would seem easier for big than for little companies to do.

Thus the New York Times in an editorial a year ago (July 5, 1950) said in part, "Large manufacturers will probably avoid the effects of President Truman's veto of recent basing-point price legislation by expanding branch plants, purchasing agents in this district disclosed last week * * * it [is] apparent that the wealthy integrated companies will sustain no serious hardship from [the] continued uncertainty. * * * This is not true, however, of small-business men for

whom the Congress has long been genuinely concerned."

And the Senate Commerce Committee, in its 1948–49 study of FTC pricing policies, concluded sadly that "It appears that however unpleasant, big business will be able to withstand that bill (for industrial relocation and readjustment required by compulsory f. o. b. mill selling). Unfortunately it seems that a large segment of small business will be unable to meet that financial obligation. The burdens of required f. o. b. mill pricing (free on board at the mill, the negative of freight absorption—Editor) appear to fall most heavily on small business."

CENTRALIZATION SEEN NET EFFECT, IF BILL FAILS

Some students of the bill to relegitimize freight absorption have concluded that it will encourage centralization, others decentralization of American industry.

The net effect, it appears likely, if the bill fails, will be centralization. For it is easier to move a processing or fabricating plant to its supplier than to move a heavy-industry mill to its market. In fact moving a steel mill or cement plant would be seven times harder than moving a broken egg from one place on the floor to another. For every ton-mile of steel movement on which freight was saved, 3 ton-miles of coal, limestone, and ore, scrap, or beneficiated taconite would have to be paid. It looks as though the Mohammed fabricators would have to come to the mountainous mills, for the most part. This runs against both the historic trend and the national defense program.

Mr. KEFAUVER. Mr. President, I send to the desk an amendment, which I propose to offer, to the pending bill, and I ask that it be printed and lie on the table.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table.

Mr. KEFAUVER. For the information of the Senate, I should like to read the proposed amendment. It is very short. It reads:

On page 2, line 7, after the word "competitive", it is proposed to insert the following: "unless the effect of the discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce."

The purpose of the amendment is to permit freight absorption by those who wish to absorb freight, and to permit them to cut prices all they want to unless doing so lessens competition or tends to create a monopoly. If such practices lessen competition or create monopoly, I cannot see how anyone who is interested in the free-enterprise system and in having competition could object to the amendment.

Before yielding to the Senator from Michigan [Mr. MOODY], I should like to say, in response to the statement of the Senator from Ohio [Mr. BRICKER], that I certainly agree with him that we are confronted with a very intricate problem. It is a problem on which there ought to be full hearings. Even after full hearings, it would still be a very difficult problem to handle satisfactorily.

That is why many of us feel that it is very bad procedure which we are following, in having a bill reported by the Committee on the Judiciary without having had one word of testimony on the bill. No witness has been given an opportunity to be heard. Several applied for the opportunity. The far-reaching ramifications of the bill and its effect on industry and small businesses ought to be fully gone into by the committee which reported it to the Senate before the Senate is asked to consider it.

The second point is that if the Senator from Ohio [Mr. BRICKER] can find one small-business man who has ever been prosecuted for absorbing freight, I should like to know who he is. All the witnesses who appeared before the Select Committee on Small Business, who were asked if they had ever been prosecuted or if they knew of any small-business man who had been prosecuted for absorbing freight or operating on the basing-point system, said they did not know of anyone. It is not the small-business people who are in favor of the passage of the bill.

Mr. President, I yield 25 minutes to the Senator from Michigan [Mr. MOODY].

Mr. MOODY. Mr. President, the bill before us, S. 719, raises two fundamental questions. The issue, in essence, is quite clear. Shall we judge acts of price discrimination by determining the intent of the discriminator or by determining the effects on competition? If we believe that "good faith" should be an absolute defense, let us repeat, an absolute defense, to a charge of price discrimination, then we should enact this bill into law. If, however, we believe that the effects on competition and on the small-business man are more important than the question of motives, motives the existence of which cannot be ascertained by objective standards in any case, then this bill must be defeated.

Between 1914, when the Clayton Act was passed, and 1936, the date of the enactment of the Robinson-Patman Act, only a few cases of price discrimination were proved, because of the "good faith" loophole in the Clayton Act. What the pending bill would do would be to restore that loophole.

Mr. President, S. 719 is among the most important and far-reaching, yet least publicized, pieces of legislation to be considered by the present Congress. S. 719, in my opinion, would affect every single small and medium-sized business in the country because, if enacted, it would bring about a fundamental change in the American antitrust laws. Action on this bill should therefore be careful, deliberate, and without haste.

I need not remind the Members of the Senate that the antitrust laws are one of the cornerstones of American economic freedom; that these laws guarantee every businessman a basic minimum of freedom and the opportunity to introduce himself and his ideas in the free and open competition of the market place; that these laws provide for a broad base in the class structure of our society; that they assure a decentralization of economic power which is as important to the American way of life as the tradition of federalism and the separation of powers between the different branches of Government.

The antitrust laws, as Judge Learned Hand has so brilliantly expressed it, neither condone good trusts nor condemn bad trusts, but forbid all trusts. Their basic purpose is to perpetuate and preserve, for its own sake and in spite of possible cost, a form of industrial organization which has competition as its motivating force. The antitrust laws were enacted because Americans—in contrast to Europeans—long ago recognized that free enterprise meant not only curbs on the power of Government but also checks on excessive private power; because Americans long ago understood that concentrated economic power tends to result in totalitarian political control; because Americans long ago decided that enterprise which is not competitive cannot for long remain

Today the philosophy of the antitrust laws is as sound as it was in 1890, when the Sherman Act was passed. In my judgment the preservation of capitalism and a policy of sane liberalism—which to me is the same thing—require that the antitrust laws remain the foundation of our economic system. In my judgment, capitalism can be preserved only if we succeed in maintaining effective and vigorous competition.

Although I am a firm believer and supporter of the antitrust laws, I am not opposed to big business as such. I know from first-hand experience the great contribution made to the war effort by many of the largest corporations in the country, some of which are located right in my own State of Michigan. I believe in a balanced structure of industry, where large, medium-sized, and small firms, the chain and the independent, the new and the old, exist side by side.

In the war effort they existed interdependently, and their direct action in contracting and subcontracting was the warp and woof of the greatest war production this or any nation has ever known. We must preserve it.

However, although I am not an enemy of big business as such, nevertheless I believe that no firm should enjoy special privileges or favors merely because of its size. I think most Members of the Senate will join me in taking the position that if the small-business man is to survive, if competition is to be maintained, we must have rules of fair play which all the competitors in an industry observe. We must make sure that firms succeed and grow big only on the basis of efficiency and not by virtue of coercing smaller rivals or by discriminating against financially less powerful competitors.

Let me illustrate what I have in mind here. It has been stated this afternoon, during the debate here in the Senate, that in competition, someone gets hurt. I think that is usually true. I am interested in seeing our system so set up, however, that at least the cards are not stacked against the small-business man, with the result that if anyone gets hurt, he must be the one who is hurt.

It would be competition of a sort if a competitor, during the night, set fire to his rival's store. But this is not the kind of competition we want to encourage; so we have laws against it.

It would also be competition if a big fellow—who had the money to do so—hired a gang of thugs to go into a little

fellow's store and scatter his goods into the streets. Surely, this kind of competition would result in some benefit to consumers, at least to those who happened to be passing by at the time and could pick up merchandise at will. As a matter of fact, consumers then would get the greatest of all bargains—goods for the lowest possible price—goods just for the picking up.

But the fact that consumers may get temporary bargains while competitors are being destroyed by this method is not considered sufficient reason to allow that kind of competition. We do not allow that kind of competition because in the long run, the consumer is protected only as long as there are many free and independent businessmen competing for his trade. As the Senator from Tennessee stated a few minutes ago, that is the foundation of our competitive system in America. It must be preserved.

That is why I say we must have rules to preserve competition, rules which include some restraint on the practice of favoring a few customers for no other reason than that they are big and financially powerful. We must have rules of fair play because in the absence of such rules the large firms will prosper while the independents are destroyed. In the absence of such rules, America will become a land of monopolies, of trusts, and cartels, a land where opportunity and individual enterprise are dead.

Mr. President, I sincerely believe that the principal reason America has progressed to so much greater a degree than the industrial countries of Europe is that we have succeeded—partially, at least—in maintaining competition. In Europe, where the cartel system infests the economic framework, they have never learned that the greatest source of industrial and economic strength lies in what might be called Detroit-style economics: efficient production, high wages, competitive prices, and vast volume. Ours is the kind of economic system which leads to a high standard of living. This is the kind of economic system which has led to the American standard of living. It is the lack of this system which has left the other countries of the world far behind America in their living standards and economic strength.

Mr. President, those who would have us rebuild America in the image of the cartels—consciously or otherwise are in effect aping the Old World system which we in America have surpassed. In America we have surpassed the Old World system in large measure because, through our economic leadership, we have built up a system of free enterprise in which independent small business has been preserved. However, those who want special privilege are forever seeking to extend their grip, forever seeking to stifle competition. Whether it is so intended or not, by its sponsors—and I do not presume to attribute motives to anyone—this bill would be legislation in defense of special interests and, as such, should be fought vigorously by everyone truly concerned with the maintenance of competition and the continued growth and prosperity of our Nation.

Mr. President, what would Senate bill 719 do? It would destroy the rules of fair competition which Congress set up when it passed the Robinson-Patman Act. It would, in effect, repeal the Robinson-Patman Act and would allow a seller to discriminate between his buyers if he claimed to be doing it in good faith. It would allow a seller to favor his large customers, not because he could serve them more cheaply than the little fellow, but merely because he claimed to be meeting the equally low price of a competitor in good faith.

As the Senator from Louisiana so well pointed out a few minutes ago, there is no reason why a competitor should not meet the price of another competitor in good faith. But there is every reason why a great corporation such as the Standard Oil Co. of Indiana should not be permitted under the law to favor four large distributing agencies in the city of Detroit and to discriminate against hundreds of small, independent gasoline distributors.

Mr. DOUGLAS. Mr. President, will the Senator yield for a question?

Mr. MOODY. I yield.

Mr. DOUGLAS. In other words, do I correctly understand that the position of the Senator from Michigan is that if the price is reduced to one buyer, it should be reduced to all buyers? The Senator from Michigan is not opposed to price reductions, but he is opposed to price discriminations tending to create monopoly. Is that correct?

Mr. MOODY. The Senator from Illinois has stated my position precisely, and I thank him very much for doing so.

Mr. President, it hardly need be pointed out that good faith is a difficult standard to define, and a next-to-impossible standard to apply. It is the kind of vague and indefinite standard which judges do not like to see in a law. It is the kind of standard which only mind readers and clairvoyants can use with any effectiveness. It is the kind of standard which—if we are interested in the effects of price discrimination on competition—is largely irrelevant.

Mr. President, Senate bill 719 makes good faith the test of legality in price discrimination cases, instead of concerning itself with the effects which a given discrimination may have on competition. In short, Senate bill 719 would allow a seller to discriminate in favor of one or a few buyers even if that disrupts, prejudices, and excludes effectively from the market thousands of other individual buyers. Therefore, Mr. President, I submit that if Senate bill 719 were enacted into law, it would legalize the economic mass murder of small-business people, and therefore eventually would result in higher prices to the consuming public, after competition had been eliminated.

Let me illustrate the effects which this bill would have on the small-business man by describing a situation which this very day prevails in the city of Detroit, a situation which could not be corrected if this bill becomes the law of the land. In Detroit today, the Standard Oil Co. of Indiana is playing favorites with regard to four large gasoline stations. These stations, which enjoy a discriminatory buying advantage of 1½ cents per gallon, can drop their price 2 cents below the prevailing market level and thus can force every retailer in the city to follow suit. They could force these retailers to meet the price cut because the gasoline trade is on wheels, because those who drive cars can keep moving until they find the price at which they want to buy. Consumers, quite obviously, do not have to stop at a particular station to get their gasoline.

What is the effect of Standard Oil's discriminatory sales policy? Who gets the benefit of this discrimination? As our hearings before the Senate Small Business Committee revealed, very few people benefit—a very small number of oil companies and just a handful of large chain retailers.

Who, on the other hand, is harmed by this situation? It harms every individual service-station operator in the city of Detroit. It harms every service station which, as a result of such tactics, becomes vulnerable to a destructive and deadly price war. It does not even benefit the consumers who temporarily get their gasoline at lower prices. It does not benefit them because such consumers will pay back the lower price many times over when the competitive, independent businessmen have been eliminated.

This is the kind of situation which this bill would legalize, by permitting producers charged with price discrimination to seek refuge behind the good-faith defense. Instead of looking for the effects of price discrimination, the law-enforcement agencies, under the provisions of this bill, would have to look for intent. They would have to become psychoanalysts to determine the state of mind in which the seller found himself when practicing such injurious discrimination.

Mr. President, I would say that from a purely realistic point of view, this is a poor standard for the law to set up. I would suggest that we use a much simpler standard; that we ask ourselves in each case involving price discrimination: "What is the effect on competition?" If our answer is that the effect on competition is injurious, then such price discrimination is bad. If the effect is to promote competition, then such action is good. Clearly, the Congress of the United States cannot enact into law a bill which would legalize any and all discrimination, regardless of the effect which such price discrimination would have on competition and on the vast majority of independent businessmen in America.

In conclusion, let me say that if the Senate wants to enact legislation to clarify the provisions of the Robinson-Patman Act, we must write into this bill safeguards which are not in it now.

I should like to call attention, in this connection, to the fact that the Senator from Tennessee [Mr. KEFAUVER] has just sent such an amendment to the desk. We must amend this bill so as to make it absolutely clear that good faith alone shall be a complete defense against a charge of price discrimination only in those cases where it can be shown that there is no adverse effect on competition.

Mr. KEFAUVER. Mr. President, will the distinguished Senator from Michigan yield?

Mr. MOODY. I am glad to yield to my colleague from Tennessee.

Mr. KEFAUVER. I have been listening with a great deal of interest to the excellent address which the Senator from Michigan has been making. He has mentioned the amendment which has been set for consideration tomorrow, and he has accurately explained it, as meaning that discriminations can be made, or freight absorbed, in any way people desire, provided it does not lessen competition or tend to create a monopoly. That would be the purpose of the amendment, would it not?

Mr. MOODY. That is my understanding of it.

Mr. KEFAUVER. Can the Senator imagine that anyone would want to enact legislation which would lessen competition or tend to create monopoly?

Mr. MOODY. Yes, I can imagine that those interested in creating a monopoly might be opposed to the amendment; but I cannot understand why any Senator should oppose it.

Mr. KEFAUVER. That is, anyone who is interested in the competitive system would not object to an amendment which would allow businessmen to do more or less what they wanted to do, provided it did not lessen competition generally or tend to create a monopoly?

Mr. MOODY. I think the amendment is very constructive, and, if it is inserted it will improve the bill immensely. If it were omitted, I think the bill could be very harmful.

Mr. KEFAUVER. I may say that from my viewpoint, even with the amendment, it would still not be a good bill, because it would still weaken the Robinson-Patman Act, as interpreted; but it would certainly be a better bill than it is at present.

Mr. MOODY. It would be a vast improvement over the measure in its present form.

Mr. WHERRY. Mr. President, will the Senator yield?

Mr. MOODY. I yield to the distinguished minority leader.

Mr. WHERRY. As I understand, the distinguished Senator from Michigan is opposing the bill because he feels that it would lessen competition. Is my understanding correct?

Mr. MOODY. That is correct.

Mr. WHERRY. The Senator is making a plea, or is saying, "We want more competition; therefore, we do not want this proposed legislation." But in regard to the question asked by the Senator from Tennessee, how can the Senator from Michigan be for more competition when he says he will accept an amendment which would have the effect of lessening competition?

Mr. MOODY. The amendment would not lessen competition.

Mr. WHERRY. The Senator has a perfect right to interpret it in that way, if he wants to; but the amendment means, in effect, that we can enact this bill, and that it will be acceptable, provided we agree to an amendment which provides that the seller can practice price discrimination so long as it does not injure competition. I ask the distinguished Senator, how is it possible to increase competition if we adopt an amendment which provides that discriminations can be made, or freight absorbed, if thereby competition is not lessened?

Mr. MOODY. Under the bill as it stands, it would be possible for a dealer to discriminate as between buyers, so that one large seller could select, in the city of Omaha, Nebr., or in the city of Detroit, Mich., or in any other city of the United States a few favored outlets, and, by reducing prices, meeting a competitor's price and reducing prices to some, without reducing them to all of his outlets, he could drive the other outlets out of business.

Mr. WHERRY. I thank the Senator for his observation, but that is not the answer to the question. At least it is not what I had in mind. I do not want to say it is not responsive.

Mr. MOODY. I am sorry. Will the Senator from Nebraska repeat the question?

Mr. WHERRY. My question is simply this: I take it that, in good faith, the Senator feels that this bill would be harmful to the competitive system, as that is what he has stated. So the Senator from Tennessee asks, "Why not accept this amendment?" I have not seen the amendment. I simply heard what the Senator said he would propose, and the amendment, as I understand it, provides that the proposed legislation would be operative up to the point where competition was injured, and beyond that point advantage could not be taken of it.

Let us take the case mentioned by the Senator of a sale in Omaha. Let us say that a Detroit steel manufacturer sells to a fabricator in Omaha, and that a manufacturer in Chicago, because he is closer to Omaha than one in Detroit, goes to Omaha and makes a competitive price for an article which he thinks is better than the Detroit product, and he meets the price of the Detroit manufacturer in Omaha. If the Chicago manufacturer gets a part of the business, the man in Omaha benefits to the extent that he does not continue to do business with the Detroit manufacturer, does he not?

Mr. MOODY. That is correct.

Mr. WHERRY. So I ask whether it is not correct that, to the extent that the man in Omaha buys from the man in Chicago, he has injured the man in Detroit, Mich.

Mr. MOODY. Yes, but he has not necessarily discriminated against him.

Mr. WHERRY. That is the very point regarding the bill which should be emphasized. He is not discriminating against him. Instead of buying steel from only one person, he has had a chance to buy from two; therefore, there is not a lessening of competition, but, under the bill, there would be increased competition, would there not?

Mr. LONG. Mr. President, will the Senator from Michigan yield for a question?

Mr. MOODY. I yield for a question.

Mr. LONG. Possibly the Senator from Michigan has not made a study of the subject of freight absorption. I may suggest to the Senator that he might care to agree with the statement that the difficulty with the freight-absorption method is that it would eliminate price competition. A price cut may not be made, but the freight absorption method might go into effect. It is one thing to absorb freight, in theory; it is another thing to absorb freight in order to arrive at an identical price with that of some other competitor. That is why the Supreme Court outlawed it. It was because the Court favored competition.

What the Senator from Michigan has urged is that price discriminations should be legal if made in good faith and if they do not eliminate price competition. The Senator was addressing himself to the situation in which a price discrimination is made in favor of large chain concerns, which would have the result of lessening competition, because it would permit the chain stores to run all the independent stores out of business, which is a completely different situation from that of the basing-point practice, where the freight absorption method is used by cement companies, for instance, as a device to eliminate price competition.

In other words, if someone wants to have more cement customers, let him cut his prices, and not match prices with someone else.

Mr. MOODY. If he cuts his price, that is competition.

Mr. WHERRY. Mr. President, will the Senator yield?

Mr. MOODY. I should prefer to yield at the close of my address. However, I do yield to the distinguished Senator from Nebraska.

Mr. WHERRY. I did not ask anything about chain-store competition. I asked a simple question, namely, with reference to a steel manufacturer in Chicago taking business away from a steel manufacturer in Detroit who had a customer in Omaha, Nebr. How can the Senator help being in favor of the pending bill, whereas, if we agree to this amendment, the fabricator in Omaha would have business taken away from him?

Mr. MOODY. The Senator has not read the amendment.

Mr. WHERRY. I should like to have an answer to my question. Certainly competition is increased if there are two places to buy steel instead of only one.

Mr. KEFAUVER. Mr. President, will the Senator from Michigan yield?

Mr. MOODY. I should like to have the Senator from Tennessee read the amendment.

Mr. WHERRY. I should like to have the Senator from Michigan answer my question.

Mr. MOODY. The Senator from Nebraska is interpreting the amendment backward.

Mr. WHERRY. I simply asked this question: How can we increase competition when we take away from the fabricator in Omaha another place at which to buy steel? That is a very simple question.

Mr. KEFAUVER. Mr. President, I think, in order to get the matter clearly before the Senate, I should read section

2 (g) as it would be with the amendment included. I think the Senator from Nebraska is reading and arguing the amendment backward.

The PRESIDING OFFICER. The time of the Senator from Michigan has expired.

Mr. WHERRY. Mr. President, I should be glad to yield five more minutes to the Senator from Michigan. I think I have taken that much time from him. I have not seen the amendment yet; I have not had a chance to read it either forward or backward.

Mr. MOODY. I am quite confident the Senator will support it after he reads it.

Mr. KEFAUVER. Mr. President, I should like to read section 2 (g) with the amendment included:

In any proceeding involving an alleged violation of this section, it shall be a complete defense to a charge of discrimination in price or service or facilities furnished for the seller to show that his differential in price, or his furnishing of greater service or facilities, was made in good faith to meet the equally low price of or the equally extensive services or facilities furnished by a competitor.

Then comes the amendment:

Unless the effect of the discrimination may be substantially to lessen or tend to lessen competition or tend to create a monopoly in any line of commerce.

Then follows the proviso:

Provided, That a seller shall not be deemed to have acted in good faith if he knew or should have known that the lower price or more extensive services or facilities which he met were in fact unlawful.

I ask the Senator if the result of that would be that a seller could cut his price provided he were not going to lessen competition or create a monopoly.

Mr. MOODY. That is the point.

Mr. KEFAUVER. I think we all agree that we do not want to lessen competition or create a monopoly.

Mr. WHERRY. Mr. President, will the Senator yield?

Mr. MOODY. I yield.

Mr. WHERRY. Whether we pass Senate bill 719 or whether we do not, I am putting dependence on the fact that a man is making a good-faith offer and is not creating a monopoly, but is following a good, simple business practice. I am assuming a man who would like to continue in business, and has suddenly found competition from a firm in Chicago. The firm in Chicago takes away half the business. I would say that the result is to increase competition and not to lessen it.

Mr. MOODY. There is nothing in the amendment which would prevent competition or prevent discrimination unless it tends to create a monopoly or to decrease competition.

Mr. WHERRY. There is nothing in Senate bill 719 that justifies any practice if it tends to create a monopoly.

Mr. MOODY. If the Senator from Nebraska will read the amendment, I feel that he may accept it.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. MOODY. I am glad to yield.

Mr. HUMPHREY. I was very much interested in what the distinguished minority leader had to say. The Senator from Colorado [Mr. JOHNSON], who is one of the major proponents of Senate bill 719, said he could not accept the amendment offered by the Senator from Tennessee, because if it were agreed to we would be right back where we were, which, of course, is exactly correct.

Mr. MOODY. The only thing the amendment of the Senator from Tennessee does is to provide that there can be no discrimination in such a way as to tend to create a monopoly. I do not see why anyone should oppose it.

Mr. WHERRY. Mr. President, will the Senator from Michigan yield further?

Mr. MOODY. I yield.

Mr. WHERRY. I agree with the Senator from Colorado. I think the Senator from Minnesota either did not understand me or misinterpreted what I said. There is no more monopoly in Senate bill 719 than there is in the amendment, because, under Senate bill 719, a man can meet the lower price of a competitor, but it must be a lawful price. If a monopoly is created, then under Senate bill 719 the seller is not in good faith meeting a lawful price.

Mr. MOODY. In that case, what is the objection to clarifying it?

Mr. WHERRY. The amendment would nullify the bill.

Mr. MOODY. It merely forbids the creation of a monopoly.

Mr. WHERRY. If we approve the amendment we shall be providing that the man in Omaha to whom I have referred cannot compete in Chicago at all.

Mr. HUMPHREY. Mr. President, will the Senator from Michigan yield?

Mr. MOODY. I yield.

Mr. HUMPHREY. If the Senate agrees to this amendment, the action of the Senate would mean that meeting competition in good faith, and permitting discriminatory prices in order to meet competition in good faith, so long as it does not promote monopoly or lessen competition, is perfectly all right. What is wrong with that? I should like to have the Senator from Nebraska tell me what is wrong with it.

Mr. WHERRY. We cannot adopt the amendment without lessening competition, which would mean that someone would suffer.

Mr. HUMPHREY. The Senator from Nebraska is doing a wonderful job in discussing academic theories, but he is forgetting the facts of economics, that what we do not have in our American economy is relative balance of power amongst economic enterprisers. On the one hand, there is a little peanut stand; and on the other hand, there is a du Pont Corp. What the Senator from Tennessee is presenting is the fact that it is perfectly all right and legal to meet competitive prices, even to meet them with discriminatory prices, so long as it does not lessen competition or promote monopoly. I say to the Senator from Nebraska that if he is for the elimination of competition or the promotion of monopoly, he should vote against the amendment of the Senator from Tennessee, and if he wants to strike a blow at monopoly, he should support the amendment.

Mr. WHERRY. Mr. President, will the Senator from Michigan yield?

Mr. MOODY. I yield.

Mr. WHERRY. In order to make the record thoroughly clear, I submit that the amendment would competely nullify Senate bill 719.

Mr. DOUGLAS. Mr. President, will the Senator from Michigan yield to me?

Mr. WHERRY. To accept the amendment would mean to destroy Senate bill 719. We should not adopt the amendment, because, if we should, competition would be lessened rather than increased, because a competitively low price which is legal cannot be met without injuring someone, and when we injure someone, we increase competition.

The PRESIDING OFFICER. The time of the Senator from Michigan has expired.

Mr. KEFAUVER. Mr. President, I yield 10 more minutes to the junior Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 10 more minutes.

Mr. MOODY. Mr. President, returning to the sequence of my remarks, let me say that if the Senate wants to enact legislation to clarify the provisions of the Robinson-Patman Act, we must write into the bill safeguards which are not in it now. We must amend Senate bill 719 so as to make it absolutely clear that good faith alone shall be a complete defense against a charge of price discrimination only in those cases where it can be shown that there is no adverse effect on competition. We must also make it clear that such defense shall not be allowed in cases where the effect of the discrimination may be to substantially lessen competition or tend to create a monopoly.

That is all there is to this issue. Anyone who is not in favor of lessening competition and is not in favor of monopoly should vote for the amendment of the Senator from Tennessee. Such an amendment, to my mind, would safeguard the interests of the small-business men of the country and, therefore, would remove most of the objections to Senate bill 719.

Mr. President, I know the Senate will consider the bill carefully before taking action, I feel confident that the Senate will then find that Senate bill 719, in its present form, represents a step backward—a step away from our American tradition of free competitive enterprise; a step downward toward the old-world system which is outmoded and outdated—the old-world system which is outproduced by America's combination of know-how, skill, determination, and initiative under a regime of vigorous and effective competition.

Mr. President, when a similar bill was before the Congress approximately 2 years ago, one of the most brilliant and perceptive newspapermen in the United States, wrote a column in the Detroit News, my old newspaper, on the subject we are now considering. He is William K. Kelsey, known as the Commentator, a very widely read and highly respected columnist of Detroit. He wrote:

Adolf A. Berle is a former Assistant Secretary of State, and is now professor of cor-

porate law at Columbia University. Testifying Wednesday before a subcommittee of the House Judiciary Committee engaged in studying the question of business monopolies, Mr. Berle said:

"Monopoly eventually reaches the point, as has been demonstrated in Europe, where it must swallow the state or the state must swallow it. I think we have shown firmly in this country that the people do not want socialism."

I may interpolate that we hear a great deal of talk about socialism. The way to socialism in America is to permit monopolies to grow so that we will have big private interests leading ultimately to a big and bigger state.

I continue to read from Mr. Kelsey's column:

Ellis G. Arnall is a former Governor of Georgia with a distinguished record in that office, and is now president of the Society of Independent Motion Picture Producers. Speaking of the motion-picture business—but his remarks may be extended to cover all big business in the United States—Mr. Arnall pointed to the delays in court procedure which are frustrating the antitrust laws, and the failure of those laws to reach back to controlling financial interests.

Recently—

Mr. Kelsey wrote—

an attempt was made in Congress to nullify what is perhaps the most important feature of the antitrust laws, and it came within an ace of succeeding.

This column was written on July 22, 1949, at a time when a bill very similar to the one now before us, which was later vetoed by the President, was pending in the Congress.

I continue to read from Mr. Kelsey's column:

On the excuse that the Federal courts by recent decisions had caused a state of confusion regarding the legality or illegality of certain business practices, such as use of the basing-point system of fixing prices, absorption of freight rates by the seller, and lowering prices in specific cases to meet competition, bills were introduced in both House and Senate to clarify these matters.

These bills, however, went a long way beyond clarification. They would virtually have annulled the powers of the Federal Trade Commission to enforce free competition under the provisions of the Robinson-Patman Act, passed in 1936 to close a great gap in the Clayton Act of 1914, which in turn was adopted to bring down to date the antitrust philosophy expressed in the Sherman Act of 1890, when the trusts were young.

One of the most numerous and potent lobbies ever organized in the history of Congress worked for the passage of these bills favoring the monopolists against the independent businessmen.

In both the legislative and executive branches it succeeded in creating such an atmosphere of confusion with its plausible arguments that men who should have known better surrendered to them.

The Justice Department's spokesman caved in, the Federal Trade Commission signified its willingness to give up the weapons which its lawyers had succeeded in getting the courts to uphold, and from the White House came word that the President was in favor of the bills.

But in the Senate, ESTES KEFAUVER, of Tennessee, pushed through that body amendments to preserve the powers of the FTC under the Robinson-Patman Act. The Senate bill then went to the House, whose Judiciary Committee promptly killed the Kefauver amendments, and without public hearings reported just the sort of bill the big business interests wanted. With equal promptness the Rules Committee granted way for consideration of the measure on the floor.

By this time, however—

Mr. Kelsey writes—

the independents had been aroused—

Mr. President, I think this little piece of history is very significant at this time because it bears precisely on the issue the Senate is facing this afternoon—

By this time the independents had been aroused to the calamity which threatened them. They, too, descended on Washington. They alerted particularly the Congressmen of the Middle West and the South. Representative Carroll, of Colorado, managed to have amendments adopted which were even stronger than those of Senator KEFAUVER, and with these included the bill passed.

The question now—

This was at a time when the bill was then pending in Congress—

is whether any bill at all will be adopted. Defeated in both Houses, big business lies between the devil and the deep blue sea.

This very perceptive newspaperman was a little optimistic at that point. He said:

If in conference the House recedes on the Carroll amendments, it must accept the Kefauver amendments; and if the Senate gives up the Kefauver amendments, it must accept those of Representative Carroll. And if no bill is passed, the situation remains just as the courts have defined it.

What actually happened a couple of days after that was that even though the Senate had passed the Kefauver amendments, and even though the House had passed the Carroll amendments in somewhat different wording, the conferees on this bill resolved the action of the two Houses by dropping out both the Carroll and the Kefauver amendments and bringing in exactly what big business wanted.

Mr. Kelsey states:

That issue will be whether big business is to be given the right to drive small business to the wall, as it can do by pursuing without legal check the processes which it has evolved to regulate and control prices.

It has been shown that monopoly need not mean ownership by a single corporation.

And this is the point of the matter, I believe:

It can be brought about by group understanding, and without formal agreement. Any industry which is dominated by one corporation, or a group of corporations, can fix and regulate prices in any territory in a way to ruin a company that refuses to follow suit—unless competition is protected by law.

Now, the Robinson-Patman Act was designed to protect small business and independent business against the practices of big business by which they could be despoiled through price discrimination. Under that law the courts have held that it is illegal to grant a special low price to one or a few purchasers, thus giving them a favorable competitive position in the community. A price lowered to one purchaser must be lowered to all. There can be no discrimination. Big business must not be able to choose its pets, and whip them into line.

It was the purpose of both the Kefauver and the Carroll amendments to preserve competition under the Robinson-Patman Act as interpreted by the courts. That is why, with either amendment, the big-business lobby is no longer interested in the bills passed by either House. It has been licked, if only temporarily.

I may point out that unfortunately both amendments were in the end eliminated, and therefore they became very much interested in the bill.

Continuing with the statement of Mr. Kelsey——

The PRESIDING OFFICER. The time of the Senator from Michigan has expired.

Mr. DOUGLAS. Mr. President, I yield five more minutes to the Senator from Michigan.

The PRESIDING OFFICER. (Mr. MONRONEY in the chair). The Senator from Michigan is recognized for five additional minutes.

Mr. MOODY. Continuing with the statement of Mr. Kelsey:

What big business refused to see is that if it obtains and maintains monopolies, even for the beneficent purposes of eliminating waste and promoting efficiency, as it alleges, the time will come, as Mr. Berle has pointed out, when either big business will run the State, or the State will take over big business.

That is something which every Member of the Senate would deplore.

That is one of the big issues before us today.

It does not seem likely that the people of the United States will permit themselves to be governed by big business, with no voice in its control. Neither does it seem likely to the commentator that they will vote, in the near future, for the operation of business by the Government.

We can all say "amen" to that, too.

The choice is unnecessary if big business behaves itself and obeys the laws as passed by the representatives of the people and interpreted by the courts without trying to change them for its own purposes.

ESTABLISHMENT OF A FEDERAL COMMISSION ON THE REVISION OF THE ANTITRUST LAWS

During the delivery of Mr. MOODY's speech,

Mr. MORSE. Mr. President, will the Senator from Michigan yield to me so I may make a unanimous-consent request?

Mr. MOODY. I yield to the Senator from Oregon.

Mr. MORSE. Mr. President, I ask unanimous consent that I be allowed to introduce a bill out of order, and that the time I expect to consume, of about 2 minutes, not be counted against the Senator from Michigan.

The PRESIDING OFFICER. Is there objection?

Mr. WHERRY. Mr. President, reserving the right to object, and I shall not object, I shall be glad to yield to the Senator from Oregon, and charge the time to the time under my control, if the Senator from Michigan prefers that it be done in that way.

Mr. MORSE. Mr. President, I also ask that my interruption may appear in the RECORD at the close of the remarks of the Senator from Michigan.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. MORSE. Mr. President, today Representative JACOB K. JAVITS, of New

York, introduced on the House side, and I now introduce in the Senate, a bill to establish a Federal commission, similar to the Hoover Commission, on the revision of the antitrust laws. We released today a joint press release on this bill, and I ask unanimous consent to have the press release printed in the RECORD at this point as a part of my remarks.

There being no objection, the release was ordered to be printed in the RECORD, as follows:

Senator WAYNE MORSE, Republican, of Oregon, and Representative JACOB K. JAVITS, Republican-Liberal, of New York, today, July 31, 1951, introduced a bill to establish a Federal commission similar to the Hoover Commission on the revision of the antitrust laws. In a statement accompanying the bill, Senator MORSE and Representative JAVITS said as follows:

"Fundamental changes have taken place in our own economy and in the economy of the world since the antitrust laws were enacted in 1890 making a specific review vital today. The problem of gearing our vast industrial machine to the demands of world leadership both in defense and civilian production require new rules. In addition, the relationship of the United States to foreign economic systems needs redefinition in terms of what will contribute most effectively to the defense of the free world and to its maximum integrated production effort.

"There has been much complaint in recent years that antitrust policies have crippled small business, particularly in its trade association activities and in its efforts to pool resources to achieve a better competitive position, denied consumers the benefits of integration, hampered the cooperation of business in the defense effort and sought to change drastically the geographical pattern of commerce. On the other hand it has been charged that big business due to policies in the last two decades has just grown bigger, that price leadership has become price uniformity and that the monopolistic privileges of patents are being grossly abused.

"We are convinced that our system of the free economy of which the major regulatory statutes are the antitrust laws needs to be refreshed and revitalized through a review of these laws in the light of the problems which have been disclosed and the methods of their solution which the courts have adopted. It is time to bring the antitrust laws back to the Congress and the people who alone should determine the Nation's economic destiny. Whether the varying economic interests of the country are right or wrong about what has occurred in antitrust law decision and administration, the review will be healthy and changes can be made in the light of the new stature of the United States on the world horizon.

"The Commission sought to be established would be composed of 12 members, 4 each appointed by the President, the President pro tempore of the Senate and the Speaker of the House of Representatives of whom two will be Members of the Senate and two will be Members of the House.

"The Commission is to study, investigate and hear evidence with a view toward determining (1) the effect of the existing price systems and pricing policies of business and industry upon the general level of trade, employment, profits, production and consumption; (2) the effect and operation of existing antitrust statutes as interpreted by and administered under judicial decisions and administrative regulations, decisions and orders, upon competition, price levels, employment, profits, production and consumption; (3) the extent and causes of concentration of economic power and financial control and their effect on competition.

"The Commission is directed to make recommendations for strengthening the antitrust laws, eliminating conflicts in policies of the antitrust laws, determining the relationship between Government and business where business is asked by Government to cooperate under the antitrtust laws, and clarifying standards of business conduct lawful under the antitrust laws. The Commission is directed to make its report in a year."

Mr. MORSE. Mr. President, I also ask unanimous consent to have the bill itself printed in the RECORD at this point as a part of my remarks.

There being no objection, the bill (S. 1944) for the establishment of a Commission on Revision of the Antitrust Laws of the United States, introduced by Mr. MORSE, was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

DECLARATION OF POLICY

SECTION 1. Whereas there exist under the antitrust statutes of the United States conflicts in policy as to the proper standards of conduct required to be observed by American industry; and

Whereas interpretation and administration of the said laws by the several courts and administrative agencies have not succeeded in resolving said conflicts; and

Whereas such conflicts and duplication of responsibility among enforcement agencies have resulted in unnecessary expense and burdens on the Federal Government and on business;

It is hereby declared to be the policy of the Congress to promote the economy of the United States, to increase the efficiency of American business and industry, to improve quality, reduce price and increase output and real wages, and to promote the free flow of goods and services to the American people by (1) strengthening the laws prohibiting monopoly and unreasonable restraints on trade and commerce; (2) clarifying standards of conduct deemed lawful under the antitrust laws; (3) adjusting the policies of the Federal Government toward business, industry, investors, agriculture, and labor to conform with the present-day needs of the American people; (4) eliminating conflicts in policy and inconsistencies in the said antitrust laws as interpreted by the courts and administrative agencies; (5) relieving industry of responsibility under said laws for conduct performed at the request of duly constituted United States Government authorities; (6) revising Federal antitrust laws, the effect of which is to impair initiative and the development of new enterprises; (7) coordinating the activities of the Government in relation to the administration and enforcement of the antitrust laws; and (8) improving the methods and procedures of administration and enforcement of such laws.

ESTABLISHMENT OF THE COMMISSION ON REVISION OF THE ANTITRUST LAWS

SEC. 2. For the purpose of carrying out the policies set forth in section 1 of this act, there is hereby established a bipartisan commission to be known as the Commission on Revision of the Antitrust Laws (in this act referred to as the "Commission").

MEMBERSHIP OF THE COMMISSION

SEC. 3. (a) Number and appointment. The Commission shall be composed of 12 members as follows:

(1) Four appointed by the President of the United States, two from the executive branch of the Government, and two from private life;

(2) Four appointed by the President pro tempore of the Senate, two from the Senate, and two from private life; and

(3) Four appointed by the Speaker of the House of Representatives, two from the House of Representatives, and two from private life.

(b) Political affiliation. Of each class of two members mentioned in subsection (a), not more than one member shall be from each of the two major political parties.

(c) Vacancies. Vacancies in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

ORGANIZATION OF THE COMMISSION

SEC. 4. The Commission shall elect a Chairman and a Vice Chairman from among its members. The Chairman shall be a Member of Congress.

QUORUM

SEC. 5. Seven members of the Commission shall constitute a quorum.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 6. (a) Members of Congress. Members of Congress, who are members of the Commission, shall serve without compensation in addition to that received for their services as Members of Congress, but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

(b) Members from the executive branch. Any member of the Commission who is in the executive branch of the Government shall each receive the compensation which he would receive if he were not a member of the Commission, plus such additional compensation, if any, as is necessary to make his aggregate salary $15,000; and he shall be reimbursed for travel, subsistence, and other necessary expenses incurred by him in the performance of the duties vested in the Commission.

(c) Members from private life. The members from private life shall each receive $50 per diem when engaged in the performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of such duties.

STAFF OF THE COMMISSION

SEC. 7. The Commission shall have power to appoint and fix the compensation of such personnel as it deems advisable in accordance with the provisions of the civil-service laws and the Classification Act of 1949.

EXPENSES OF THE COMMISSION

SEC. 8. There is hereby authorized to be appropriated out of any money in the Treasury, not otherwise appropriated, so much as may be necessary to carry cut the provisions of this act.

EXPIRATION OF THE COMMISSION

SEC. 9. Sixty days after the submission to Congress of the report provided for in section 10 (b) the Commission shall cease to exist.

DUTIES OF THE COMMISSION

SEC. 10. (a) Investigation: The Commission for the purpose of recommending to the Congress measures required under and amendments to the antitrust laws to accomplish the policy declared in section 1 of this act, and other measures deemed by the Commission necessary or appropriate thereto shall study and investigate and shall hear evidence with a view toward determining, but without limitation (1) the effect of the existing price systems and pricing policies of business and industry upon the general level of trade, employment, profits, production, and consumption; (2) the effect and operation of existing antitrust statutes as interpreted by and administered under judicial decisions and administrative regulations, decisions, and orders, upon competition, price levels, employment, profits, production, and consumption; (3) the extent and causes of concentration of economic power and financial control and their effect on competition.

(b) Report: Within 6 months the Commission shall make a report of its findings and recommendations to the Congress.

POWERS OF THE COMMISSION

SEC. 11. (a) Hearings and sessions: The Commission, or any member thereof, may, for the purpose of carrying out the provisions of the act, hold such hearings and sit and act at such times and places and take such testimony as the Commission or such member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such member. The Commission shall have such powers of subpena and compulsion of attendance and production of documents as are conferred upon the Securities and Exchange Commission by subsection (c) of section 18 of the act of August 26, 1935, and the provisions of subsection (d) of such section shall be applicable to all persons summoned by subpena or otherwise to attend and testify or produce such documents as are described therein before the Commission, except that no subpena shall be issued except under the signature of the Chairman, and application to any court for aid in enforcing such subpena may be made only by said Chairman. Subpenas shall be served by any person designated by the said Chairman.

(b) Obtain official data: The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality, information, suggestions, estimates, and statistics for the purpose of this act, and each such department, bureau, agency, board, commission, office, independent establishment or instrumentality, is authorized and directed to furnish such information, suggestions, estimates, and statistics directly to the Commission upon request made by the Chairman or Vice Chairman.

Mr. MORSE. Mr. President, I wish to say that some weeks ago a very distinguished lawyer of the west coast, Mr. Philip S. Ehrlich, of San Francisco, made a speech before the American Paper & Pulp Association on the subject "The American Economy and the Antitrust Laws," in which he proposed the creation of such a commission as is called for in the Javits-Morse bill.

Mr. President, I ask unanimous consent that Mr. Ehrlich's speech be printed at this point in the RECORD as a part of my remarks, because it sets forth a good many of the reasons for the bill, and for the establishment of such a commission as is proposed. I wish to say, however, for purposes of future reference, that the introducing of Mr. Ehrlich's speech in the RECORD does not mean that I concur in all the observations and arguments he makes in the speech in respect to the present operation of the antitrust laws. But I am introducing the bill, as our press release points out, with Representative JAVITS, primarily because I think such a thorough study of the antitrust laws needs to be made in the interest of protecting the legitimate rights of small business in America.

There being no objection, the address by Mr. Philip S. Ehrlich was ordered to be printed in the RECORD, as follows:

THE AMERICAN ECONOMY AND THE ANTITRUST LAWS

(Address by Philip S. Ehrlich before the American Paper and Pulp Association, February 22, 1951)

Today one vital question should be uppermost in the mind of every thinking businessman. That question is, In what direction is the American economy traveling? That, as I see it, is one of the most important issues facing us. Upon the answer—and I say this advisedly—depends the American way of life, which has made America what it is today.

The United States has become the leading nation of the world as a result of American capitalism, known as the free- or private-enterprise system. This system has provided the American people with the highest level of security and prosperity ever known to man. This system has proved its ability to tackle squarely and to solve completely any crisis it has ever faced, including World Wars I and II. This system will defeat the communistic threat to civilization. The firing line has been the bulwark of our national defense, but, with all due respect to it, where would it be without the production line of America? Yet, in spite of the very remarkable and continuing achievements of our free-enterprise system, powerful forces now operating within the Government and in our country have undertaken to destroy, and are in the process of destroying, this system.

If our free enterprise is to function properly—in fact, if it is to survive—it is essential that we preserve our competitive system, which rewards individual initiative, efficiency, and ability.

Our economy has grown and prospered because dynamic, vigorous competition for the markets has always existed, and has resulted in more and better products at cheaper prices.

Unless we take prompt action to preserve private enterprise, and unless legislation is enacted to guarantee its survival, there is grave and imminent danger that free enterprise will not survive. Concurrently with its destruction will come the nationalization of industry and the establishment of a socialistic state, with its planned and regimented economy. I need only menton the unfortunate results of socialism to England to indicate the dangers.

If America is to be strong; if America is to be productive; if America is to be free; if America is to overcome the dangers now facing civilization, free enterprise must be perpetuated.

In order that there may be no quesiton as to my attitude, I emphasize that while I am a firm believer in free enterprise, I am opposed to monopoly in any form, and to any other abuse of competitive freedom by business, labor, agriculture, or any other group in the economy. I am for effective competition, free of unnecessary and harassing governmental restrictions, management abuses, the pressures of labor, agriculture, or any other segment of our American system.

Because of the irresponsible conduct of certain elements in business and industry, Congress enacted the Federal antitrust laws, including the Sherman Act, the Clayton Act, the Federal Trade Commission Act, and the Robinson-Patman Act amendments to the Clayton Act. These antitrust laws were designed solely for the purpose of regulating, not regimenting, the orderly conduct of business. They were enacted as an instrument to preserve our free enterprise system. Today, however, the Government agencies charged with the enforcement of these antitrust statutes—principally the Federal Trade Commission and the Department of Justice—have interpreted and enforced them in a manner that is destroying our free enterprise system and creating a planned, regimented economy. The Government enforcement agencies and the courts have imposed upon these Federal regulatory statutes their own political, economic, and social ideologies, which are at variance with our free enterprise system. By so doing they are disrupting the system.

This threat to our economic existence results from, first, the erosion of procedural due process in antitrust litigation, and, second, from unsound, substantive interpretations of the antitrust laws.

Let us consider, first, the erosion of procedural due process in antitrust litigation. Procedural due process means simply the right to a fair and impartial trial, guaranteed to a litigant under the Constitution. The erosion, or breakdown, of procedural due process in economic litigation has robbed the litigant of this constitutional right.

Part of this erosion occurs when antitrust controversies are tried, in the first instance, before the courts. The courts have gone beyond judicial interpretation of the law, and have assumed unto themselves the right to decide economic principles.

Further erosion occurs because the courts, on appeals from decisions of the Federal Trade Commission, have developed a doctrine giving recognition to the alleged economic expertness of the Commission. This makes the courts, in such instances, subservient to the economic opinions expressed by the Federal Trade Commission.

As a result of this procedural approach to the antitrust laws, the courts and the administrative agencies have become our economic dictators. This constitutes one of the most unprecedented developments in the history of American jurisprudence.

Under the Constitution, a citizen facing a run-of-the-mill criminal charge is presumed innocent until proved guilty beyond all reasonable doubt. In antitrust proceedings, however, the courts and the Federal Trade Commission infer criminal and civil violations of the antitrust laws from facts of the slimmest character, thereby practically nullifying this presumption.

The presumptions, based upon presumptions, which the courts and administrative agencies are making to find violations of the antitrust laws, make it almost impossible for the economic litigant to be successful in such litigation with the Federal Government.

The courts and the Federal Trade Commission have determined that the ordinary rules of evidence, applicable in all other types of litgiation, have little, if any, application in antitrust litigation. As a result, surmise, suspicion and guesswork are often accepted in lieu of facts, as the basis for judicial action. For example, the Justice Department contends that in an industry with a standardized commodity, price leadership resulting in uniform prices is sufficient evidence from which to infer a violation of the antitrust laws.

Further, it has been determined by the courts and the Federal Trade Commission that a violation of the Robinson-Patman Act may be established by showing what the Federal Trade Commission is pleased to call a "reasonable possibility of injury to competition." This phrase, "reasonable possibility of injury to competition," has no objective meaning, and none can be given it by either courts or lawyers. Such interpretation makes the law no longer a catalog of rules of conduct, but a subjective game based on the personal viewpoint of the judge or agency having an economic controversy to decide. Accordingly, in many instances business cannot be properly advised of the legality of its proposed conduct, under the antitrust laws, until such conduct has been tested in litigation.

While we have been most careful to safeguard the life and liberty of a vagrant or a murderer, and to guarantee him procedural due process, we have failed to preserve to the economic litigant the same fundamental rights.

Turning now to the second major aspect of the problem—the unsound, substantive interpretations of the antitrust laws, which have been the most effective means of destroying free enterprise—permit me to outline a few typical examples. I am sure they will sustain the charges I have made.

Under the prevailing interpretation of the Sherman Act, the terms "trade" and "commerce" have been broadened to include insurance and farming, as well as the personal services rendered by real estate brokers and physicians. Even retail sales, within a State, of cigarettes and groceries are now deemed to be interstate commerce. As a matter of fact, the definition of interstate commerce has been so extended that hardly any distinction remains between interstate and purely local commerce. By destroying the distinction, the Federal Government has usurped an authority which is not its rightful domain; namely, over business which is purely local in character.

You gentlemen are perhaps familiar with the case of Federal Trade Commission against Cement Institute, involving the basing-point system of delivery, in which the Supreme Court determined that equalizing freight rates violated the antitrust laws. This decision means that the Federal Trade Commission has practically succeeded in establishing that the only legal method of pricing is f. o. b. mill. If this f. o. b. mill principle is finally sustained by the Supreme Court, it will be completely disruptive of commodity distribution.

In United States against Trenton Potteries Co., the Supreme Court decided that all agreements to fix or stabilize prices were, in themselves, wrong, regardless of the reasonableness of the prices fixed. As a result of this ruling, businessmen may not, by agreement among themselves, protect the consumer against exorbitant prices, nor may they by concerted action hold the line on reasonable prices even though a particular industry may be threatened with destruction as a result of chaotic market conditions.

In United States against Aluminum Company of America, the court of appeals decided that for a business merely to be big was to violate the antitrust laws. As though this doctrine were not sufficiently startling, the court further declared that a large, efficient, and successful business violates the law, and is a threat to our economy, unless it participates in the development of competing enterprises. I submit that to compel a business to build up competitors is incompatible with free enterprise.

In the latest case against the three largest manufacturers of cigarettes, the Supreme Court decided that an enterprise is destructive of our economy if the evidence discloses that it has the power to exclude competitors from the market, even though it does not exercise that power, nor engage in any competitive abuses. The effect of this judicial legislation by interpretation of the antitrust laws is to punish a business simply because it is big, efficient, and successful.

Similar decisions of a destructive character have been handed down in litigation involving the following companies: Standard Oil, General Electric, Westinghouse, Pullman, Du Pont, Paramount, and many others, as well as many of our great industries, including petroleum, electronics, motion pictures, dairying, and the chemical industry.

So much for the destructive results already accomplished.

Now let me give you a few examples of what the Department of Justice and the Federal Trade Commission are attempting to persuade the courts to do to our system in litigation still pending.

In its suit against the Great Atlantic & Pacific Tea Co., the Department of Justice is asking the courts to dismember and dismantle this enterprise because of its size. If it succeeds, it will benefit no one. It will, however, injure the consuming public, the employees of the company, the shareholders, and, in fact, an important segment of our economy.

The same type of attack is being made against the meat packers, the American Telephone & Telegraph Co., and its wholly owned subsidiary, Western Electric. The investment-banking business in the United States is now actually on trial and if the Department prevails will be practically destroyed.

In the litigation against the manufacturers of spark plugs, the trial examiner, in a Federal Trade Commission proceeding, has eliminated the jobber's functional discounts and the use of functional classifications in the price structure. If the Commission and the courts sustain this viewpoint, it may well result in the breakdown of jobber distribution.

In the proceedings pending before the Federal Trade Commission against Zellerbach Paper Co., the Federal Trade Commission is seeking to establish that a sale at prices other than those published in the seller's price list is a violation of the Robinson-Patman Act. The theory of the Commission is that a buyer may not bargain with the seller for a better price than that shown in the seller's price list, except at his legal peril. If the Federal Trade Commission is successful in establishing this proposition, the end of bargaining in business in America is at hand. The right to trade and bargain for a better price, as I see it, is a cornerstone of free enterprise.

Another destructive theory of the Federal Trade Commission, approved by the courts in the so-called Rigid Steel Conduit case, is that the antitrust laws are violated when sellers ignore geographical differences, such as freight rates, if this results in uniformity of prices, even though there is no evidence of an agreement, either express or implied, to fix prices. Under these conditions, business is guilty of conscious parallelism, as the New Dealers and Fair Dealers call it, or, in language that you and I understand, a conspiracy to fix prices.

In litigation involving the Standard Oil Co. of California, the Justice Department is seeking to destroy an integrated enterprise by persuading the courts to deprive Standard Oil of the right to sell gasoline and other petroleum products at retail. If these theories prevail, the Standard Oil Co. will be forced to choose between manufacturing and retail marketing, but cannot engage in both. Such disruption of an integrated and successful enterprise would, as in the case of the Atlantic & Pacific Co., penalize the consumer, the worker, the shareholder, the supplier, and, in the present emergency, the Armed Forces. In short, it would penalize all of us.

Another aspect of the problem relates to bargaining with labor unions on an industry-wide basis. A great deal of progress has been made in the solution of labor-management problems through such industry-wide bargaining. However, the Department of Justice contends that it considers industry-wide bargaining with labor unions illegal. Its theory is that this practice constitutes price fixing, and that an agreement on a component of cost, namely, labor, is an agreement on prices. Acceptance of this theory by the courts would be a body blow to labor-management relations and, therefore, to the basic economy.

As a final example of what is going on today, the Department of Justice is seeking to dismember the United Shoe Machinery Corp. and to deprive this company of its manufacturing plants, machines, and patents.

The Government has asked the court, in its prayer for relief, to deprive the corporation of the right to lease its machines, and to compel the company, under such terms and conditions as the court seems proper, to offer and to sell its machines to its present lessees and the general public at reasonable prices. The Government asks that if the company be permitted to lease its machinery, it may do so only on the terms and conditions fixed by the court, and that the company be compelled to license, under its patents, any person who desires to be so licensed, under conditions which apply not only to such patents as the company presently owns but to all other patents that the company may develop. The Government further requests that the terms and conditions of such licensees be fixed by the court, and that in such licenses be included the company's know-how and all its trade secrets. Finally, the court is asked to require the company to sell its interest in 8 or 10 plants which manufacture articles used in the shoe-manufacturing business, and that thereafter the company be enjoined from engaging in the manufacture or distribution of shoe-factory supplies. If the Government prevails in this litigation, there won't be much left of the United Shoe Machinery Corp.

This litigation, like all other antitrust litigation, affects not only the particular business involved but is precedent making and affects all industry.

In part, through this mechanism of divestiture, divorcement and dissolution of business enterprise, the enforcement agencies of our Government and the courts are destroying industry and disrupting our economy.

In passing, let me point out to you that another element contributing to the destruction of the system is the existence of two conflicting economic theories incorporated in the antitrust laws: one requiring uniformity in price, trade practices and treatment of customers; the other requiring differences in prices, trade practices and treatment of customers among competitors. On the one hand you are required to avoid prices, trade practices and trade customs "uniform with those of your competitors," on penalty of violating the Sherman Act. On the other hand, you must "follow" uniform prices, trade practices and trade customs with all customers, without exception, or be in violation of the Robinson-Patman Act.

To show you how far-reaching this danger is, I am going to digress for a moment and illustrate the possible impact of this situation on our foreign trade.

Let's say, for example, that a Canadian newsprint manufacturer sells his newsprint in the United States. According to the interpretation of the antitrust laws contended for before the Subcommittee of the Judiciary Committee of the House of Representatives, at the antimonopoly hearings covering newsprint, last June, this manufacturer may violate our antitrust laws by some act which he performs within the boundaries of Canada. Such an act may be perfectly legal in Canada; but because, hypothetically, it would be illegal to perform a similar act in the United States, the Canadian manufacturer is automatically a violator of our antitrust laws.

It was further insisted that if newsprint were in short supply in the United States, and the Canadian manufacturer ships only a portion of his output to the United States, diverting some of it to another country, he violates the antitrust laws.

Should these interpretations of the antitrust laws be sustained by the courts and the Federal agencies, foreign commerce would be seriously affected.

These, then, are just a few illustrations of the hacking up of our productive machine. Although there are many more instances which I could present to you, I am confident that these few are sufficient to dramatize the grave danger facing us.

As an aid to the solution of this problem, we must develop an affirmative, not a critical, negative approach. Accordingly, I make this concrete proposal: that, as a first step to the solution of the problem, a national commission be created, by joint resolution of Congress, to explore and study the economy of our country and the antitrust laws of the United States, together with the decisions of the courts and Federal administrative agencies, which affect the economy of the country.

This national commission shall thereafter report its findings to the people, to the President, and to Congress. The Commission shall recommend legislation embodying such economic principles, and such substantive and procedural changes, amendments, and revisions of the antitrust laws and decisions of the courts and administrative agencies as are necessary to achieve the objective. There is ample precedent in our history for setting aside the decisions of the courts and Federal agencies, by legislative enactment.

Such national commission should represent every segment of our American society, including consumers, farmers, and the laboring, professional, and businessman. It should be chosen on nonpartisan lines, with full investigatory powers, including the right to subpena witnesses and employ counsel and experts. It should be adequately financed by congressional appropriation. It should be required to file interim reports and make its final recommendations and findings within a period of 5 years.

If the American people decide that free enterprise should be perpetuated, the recommendations of the national commission must, on the one hand, protect the American people from abuses of economic power, which some segments of American industry have stupidly engaged in during the past 60 years. On the other hand, these recommendations and findings must protect the greatest industrial machine ever created, from judicial and bureaucratic interference and regimentation. This will permit free enterprise to survive, preserve civilization, and not only maintain our present high standard of living, but continually improve it.

The investigation of this problem and the recommendations for legislation can best be made through a national commission, and not Congress. In answer to those who question this statement, I reply that the issues are so grave, so complex, and are subject to so much political pressure by the various pressure groups, that political consideration, rather than the ultimate welfare of America, would probably prevent a proper determination if such determination were left to Congress. The arena of politics is not the appropriate place in which to investigate the facts and report the findings. This work must be undertaken in an atmosphere beyond the realm of politics where selfish interests too often are the activating force. It must be placed upon a plane where the sole motivation is what is best for all elements of American society. The report of the Hoover Commission for Reorganization of the Executive Branch of the Federal Government, as well as the work and reports of many other national commissions, demonstrates the effective and constructive results which can be attained by this procedure.

We who believe and have confidence in the free-enterprise system are faced squarely with a challenge from the forces that are bent on its destruction. The way to meet this challenge is to present the facts fairly and honestly to the people. Most of our critical problems have been and are being solved by the enactment of appropriate legislation which has resulted from the crystallization of public opinion.

Accordingly, it is my belief that a report by such a national commission on this most vital issue would crystallize public opinion and result in the enactment of legislation epitomizing the economic philosophy of the American people. If this is done, I, for one, am willing and happy to let the people determine the economic destiny of our country. This, of course, is the democratic way, and I am convinced that the choice of the people will be infinitely wiser than that of the planners and the ideologists of regimentation now destroying our economy. I know that to live under free enterprise will be the choice of the American people.

PRICING PRACTICES

The Senate resumed the consideration of the bill (S. 719) to establish beyond doubt that under the Robinson-Patman Act it is a complete defense to a charge of price discrimination for the seller to show that its price differential has been made in good faith to meet the equally low price of a competitor.

Mr. LONG. Mr. President, will the Senator from Illinois yield 25 minutes to me?

Mr. DOUGLAS. Mr. President, I yield 25 minutes to the junior Senator from Louisiana.

Mr. WHERRY. Mr. President, will the Senator yield for a parliamentary inquiry?

The PRESIDING OFFICER. Is the Senator from Illinois acting for the junior Senator from Tennessee [Mr. KEFAUVER]?

Mr. DOUGLAS. Yes, Mr. President.

Mr. WHERRY. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. LONG. I yield.

Mr. WHERRY. I should like to ask how much time has been used by both sides?

The PRESIDING OFFICER. The proponents of the measure have consumed 2 hours and 24 minutes. The opposition has consumed 2 hours and 4 minutes.

Mr. WHERRY. Then the proponents have consumed 20 minutes more than has been used by the opposition.

The PRESIDING OFFICER. The Senator is correct.

Mr. WHERRY. I wonder if the distinguished Senator from Louisiana [Mr. LONG] would be willing to grant a request. The distinguished Senator from Nevada [Mr. MALONE] would like to speak for about 20 minutes. I wish to say now that the Senator from Nevada does not wish to speak on the subject of the pending bill. However, he is leaving the city tonight by plane, and it is almost mandatory that he speak now if he is to be accorded that privilege.

Mr. LONG. Mr. President, I shall try to conclude my remarks within 25 minutes, so that the Senator from Nevada will have time to speak. I believe he will have time to make his speech and carry out his plans. I have discussed this matter with him.

Mr. WHERRY. I did not know that. I am sorry. I thought the Senator from Nevada wished to leave now. It is perfectly agreeable for the Senator from Louisiana to proceed.

Mr. LONG. Mr. President, as has been suggested to me by the senior Senator from Illinois, the title of this bill should be changed to read: "A bill to destroy the antitrust laws," or "A bill to legalize monopolistic pricing practices." That is what the bill actually would do.

There has been one recent victory by the major companies of America, in favor of monopoly and monopolistic pricing methods. We have seen in the past two Congresses every kind of effort made to overrule or override decisions of the Supreme Court which were against monopoly, against the Cement Institute, and against other large concerns. And now we see that once the large concerns get any sort of decision in their favor, someone rushes in and says, "Let us write that decision into statute law, and submit a report which will broaden the decision and make it cover practically all situations."

The junior Senator from Louisiana was one of those who fought diligently against Senate bill 1008, the so-called basing-point bill, in the last Congress. That was a bill to create a major loophole in the antitrust laws. Many of us fought it for that reason.

As we see it, the same objections would apply to this proposed legislation which applied to the basing-point bill in the last Congress.

One of the main reasons why we oppose the pending bill is that we believe in our American system of government. We believe in the antitrust laws. We believe in the laws which have been enacted to keep competition alive. We have seen what has happened in European countries without antitrust laws. We have seen price-fixing cartels organized to eliminate price competition, just as the Cement Institute sought to do, and just as it is sought to legalize the elimination of price competition by Senate bill 719.

We have seen competition disappear, and we have seen European countries gradually go over to socialism. We have seen governments take over industries because those industries no longer represented the opportunity for all people to engage in commerce and private enterprise. That is the sort of thing which we hope to prevent in the United States.

If we want to keep alive the private-enterprise system and private industry, we should give every American citizen the opportunity to engage in it. We feel that the system of capitalism is for everyone in America. The system should make it possible for the little man, the independent, with his own capital, to go into business and to have a chance to succeed.

Why do we have the Robinson-Patman Act, which this bill would practically wipe off the statute books? We have it because back in 1930, 1932, 1933, and 1934 the large chain stores were driving the small independent merchants out of business by their economic power, and Congress ordered an investigation into chain-store practices, in an effort to prevent that sort of thing from going further.

The investigation revealed that the chain stores had certain advantages which were entirely fair for chain stores. They had the advantage of mass purchasing. They had the advantage of mass production. They had the advantage of mass distribution, and the economies which go with it. However, the investigation revealed that one of the main reasons why so many small-business men—druggists, grocers, and tire dealers—were being driven out of business was the price discriminations made in favor of their larger competitors because of their economic power. Congress enacted the Robinson-Patman Act, designed to prevent such a condition. Let me give an example of what happened. The investigation revealed that

Sears, Roebuck & Co. was buying tires from the same manufacturer, the Goodyear Tire & Rubber Co., from which the independent concern was buying tires, but Sears, Roebuck & Co. was getting the tires at one-third off. The retail markup was less than 33⅓ percent. Therefore, Sears, Roebuck & Co. could sell the tires at less than the independent tire dealer had to pay for them. Sears, Roebuck & Co. could do so at a profit. What chance was there for competition?

The investigation also revealed that the large concerns would bring tremendous pressure to bear on manufacturers to give them a favored discount. They would tell the manufacturer, "If you don't give us a major discount, discriminatorily in our favor, or a larger rebate, we will manufacture the product ourselves." Thus they would get the benefit of that kind of discrimination.

Those are the reasons why large concerns were able to drive the smaller concerns out of business.

The Robinson-Patman Act was passed. It said in effect, "If you want to reduce your prices, you can reduce them, but you must reduce them to all your customers, not just to one customer. If you want to give certain rebates to some customers, you must give the other customers a chance to get those rebates also. If you want to furnish certain services to a certain customer, you must furnish the same services to the other customers."

The Robinson-Patman Act was a carefully thought-out piece of legislation. It provided that one could discriminate between one's customers in good faith, to meet competition, and that such would be a procedural defense. In other words, it was intended by the coauthor of the act, Representative PATMAN—and I am sure he would so testify—that if a person wanted to drop his price for the benefit of one particular concern, he could do so, providing the effect of it was not to injure competition. If injury to competition resulted, and could be shown, the person would be prohibited from thus discriminating in favor of one of his customers.

How did small business make out? How did the rank and file little grocer, druggist, and filling station operator make out after Congress passed the Robinson-Patman Act?

I hold in my hand a study made by the National City Bank of New York. I do not believe anyone would accuse that bank of being against big business. This is what was said in their publication of November 1949, which is an analysis of the 100 largest retailers in the United States. It says that in 1948, the 100 largest retailers had 15 percent of the Nation's business.

By a strange coincidence that is exactly the percentage of the Nation's business which they had 10 years ago. Something must have helped small business to hold its own. I believe one of the main reasons was that the big price discriminations in favor of the large concerns and against the small concerns were reduced and restrained under the Robinson-Patman Act.

When I speak of the large concerns which have 15 percent of the Nation's business I include concerns like the Great Atlantic & Pacific Tea Co., which was doing a $2,837,000,000 volume of business at the time; Safeway, which was doing $1,277,000,000; and Sears Roebuck, which was doing $2,296,000,000 in business at that time.

Mr. President, unless some effort is made and laws are passed and enforced to protect the smaller concerns against the economic power and wealth of the larger concerns, it will be easy enough for the A. & P., for example, at one location to lose money for as long as they care to lose it, in order to drive out of business the little corner grocer across the street, whom Congress intended to protect by the Robinson-Patman Act. It would be completely legal for a concern selling a product to the Great Atlantic & Pacific Tea Co. to sell the product far below the price at which it would sell the same product to the ordinary independent merchant. The result of such a practice in the long run would be that the small independent merchant would be driven out of business.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. LONG. I yield for a question.

Mr. HUMPHREY. Back in the 1930's, before the Robinson-Patman Act was enacted, it was common practice in the retail field for a chain operator to come into a community in which a local merchant had what he would call leaders. The Senator understands what I mean; does he not?

Mr. LONG. Yes.

Mr. HUMPHREY. The so-called come-ons for his store. He would have, for a certain period of time, a number of come-ons or price leaders, or commodity leaders. Then the chain operator would come in and meet the price of the price leaders, and thus take away the customers from the local merchant. At the same time, the chain operator at his store 100 miles away would offer the same commodity at a price 15-percent higher than the price of the leader in the community to which I have referred. Out of the profit from the store 100 miles away, the chain operator would be able to sustain himself in the local community until he drove the local merchant out of business. After he drove the local man out of business, he would raise the price on that item.

Mr. LONG. Yes.

Mr. HUMPHREY. That is what the Senator from Minnesota was trying to tell the Senator from Nebraska [Mr. WHERRY]. It is one thing to speak about theory, but another thing to live through a situation and see what happens. A chain operation is not an individual business. It is a system. It can easily be seen that when a system starts to grapple with an individual in a local community the system inevitably wins. It wins because it can draw its strength from other parts of its enterprise, until it eliminates the little man.

Mr. LONG. Yes.

Mr. HUMPHREY. That is what the Robinson-Patman Act prevents. As I understand from what I have heard on the floor of the Senate, as well as from my own study, Senate bill 719 would literally repeal the Robinson-Patman Act. If it were repealed we would go back to the Clayton antitrust law. In that way we would be making progress in reverse. We would be going back to a condition which was remedied 15 years ago, and yet some persons would say that we would thereby make a substantial gain for free enterprise. To me that is nonsense.

Mr. LONG. I completely agree with the Senator from Minnesota. The study, which I shall later place in the RECORD, shows that the average net profit on individual sales in the large stores is only about 3.2 cents. It will be seen that if a 10-percent discount were permitted to the large stores, which would be a 10-percent favoritism, they would enjoy favoritism that would amount to more than three times the actual profit.

The small, independent merchant, trying to compete with the chain store in his own right, with the economies which he can effect, by being able to handle his own cash register and keep his own books—economies which the chain store could not bring about, because it would have to hire a man to keep the bookkeeper honest, and another man to watch the one who handles the cash register—still could not compete with the chain store, because the small merchant would have to pay more for his commodity than the price at which the chain store could sell the same commodity.

All of us are in favor of low prices. We all want low prices. However, we do not want to have a discriminatory pricing system used in such a manner as to destroy completely all competition. We must realize that if competition leaves the picture we will no longer be able to hold down prices. Men do not go into business for charity. They go into business to make a profit. They want to make as large a profit as they can. If we let them get together for the purpose of eliminating competition or destroying competition, the natural result will be increased prices.

Mr. President, we want competition. However, we do not want to give the large, powerful concerns a weapon by way of price discrimination which will enable them to destroy all their smaller competitors. We know that if we do it we will all have to pay more for a commodity, in the long run, than if we make them treat all customers alike.

We do not want to have concerns getting together among themselves and deciding what the price of a commodity should be, or entering into an agreement—which perhaps could not be proved, except that the circumstances would indicate it to be true—that no one would cut the price.

I heard the distinguished junior Senator from Nebraska ask a question of the Senator from Michigan [Mr. MOODY] a short time ago. He asked:

> What is wrong with a man in Detroit absorbing freight in order to sell some steel in Omaha in competition with a man who is doing business in Omaha?

Mr. President, it is all right to absorb freight in order to sell steel. However, if every time a load of steel is sold we find that all steel concerns are charging the same price, we know that they are

not competing, but that they are agreeing among themselves what the price ought to be and what price the public must pay. In that way the public is not getting the benefit of any price reduction. Under such a system, we could have ten times as many steel mills as we have today, and we would still be paying the same price. That is why we want the large concerns to come out into the open with their prices and to stop the hidden-ball play. We want them to let the public see what they are paying for the steel, in order that we can get more effective price competition.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. LONG. I yield for a question.

Mr. HUMPHREY. I wish to obtain more information on the question raised by the Senator from Nebraska. In the case to which he referred in connection with the pending bill, I gathered that the inference was that meeting the price would have been done in good faith in the Omaha market by the Chicago processor or the Detroit processor.

Mr. LONG. Yes.

Mr. HUMPHREY. How would the determination be made of what was in good faith? What kind of a moral blood test would be run to determine what was in good faith under the terms of the pending bill? How would motives be determined? I think it was Dr. Mund, professor of economics at the University of Washington, at Seattle, Wash., who made some comment on that subject before the Small Business Committee. He said:

> Any effort to test the public desirability or permissibility of discrimination by reference to the spirit or motive in which it is exercised is doomed to failure, for business, in the absence of charity or sentiment, is done for profit.

In other words, he said that business is done in order to make money. I think that is a legitimate aspiration. However, in this instance, how can good faith be determined, without the adoption of the Kefauver amendment?

Mr. LONG. Of course, the Senator knows that those who talk about wanting to meet competition in good faith have not done much talking about undercutting competition. It occurs to me that if a businessman in Michigan wants to take the customer of someone in Omaha, why not have him cut his price and thus get the business?

However, those who propose this bill say they want to permit a competitor to meet the price. I believe the Senator from Minnesota will find that what those who oppose the bill want to do is to go back to a basing-point pricing system, eliminate competition among themselves, and let every mill determine for its own area what the public will have to pay for cement, for instance; and if that mill cannot sell in its own area all the cement it can produce, because the price is too high, then they would let the mill dump the remaining cement in other areas, without selling below the price of the mills in those distant areas.

We do not wish to permit the elimination of the type of price competition which should be maintained in our economy.

In the insurance-company business we have a situation similar to that which existed in the cement industry. I notice that when my State desires to take out insurance, and requests sealed bids, all the bids are identical. Of course, we know that occurs because all the insurance companies have agreed to charge the same rates, but in their case they are subject to a casualty-rating system, in practically every State, which tells them what their rates shall be. That is done in order to prevent them from charging the public too much.

If the cement companies and the steel companies would like to be subject to regulation, and would like to let the Government tell them what prices they could charge, I say they might have a good case. However, if they do not want to ask for regulation in a free, competitive economy, but, instead, desire to do business in the way the ordinary business does, then why should not they accept the hazard of price competition among themselves, rather than attempt to eliminate it by a basing-point pricing system?

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. LONG. I yield.

Mr. HUMPHREY. I should like to have the Senator give us his interpretation of how this bill would, in itself provide a sort of smoke screen for a new type of basing-point system. I recall that the Senator made some comment on that point. I understand that there is within the confines of this bill, which appears to be so pure and so innocuous, and which is said to be for the purpose of permitting competition, an arrangement which actually would provide a new method for a basing-point system, one which has not been developed up to now. Is that correct?

Mr. LONG. Yes. It is very easy to see how that could be done under this bill. The basing-point pricing system was one by which all manufacturers of cement would charge identically the same price, no matter where the cement was sold; and if sealed bids were requested, all the bids would be found to be identical. Theoretically, all the companies were mindreaders, and thus were able to know exactly what all the other companies would charge. In such a situation, if conspiracy were charged, there was great difficulty in proving the charge under the antitrust laws. That situation existed for over 70 years.

Of course, the Government knew that something was fishy; the Government knew that such things did not happen solely by accident, and that the companies had found some means of eliminating competition among themselves.

Mr. KILGORE. Mr. President, will the Senator yield?

Mr. LONG. I shall yield in a moment.

In that case the Government could not find that there had been a so-called Gary dinner, because when the Gary dinners were outlawed by the antitrust laws, the companies stopped holding Gary dinners, but found other means of eliminating competition among their various competitors.

However, the Government was able to prove that although the various concerns were discriminating left and right in prices, in getting business in distant markets, no matter how much they discriminated, they always arrived at identical prices for every competitor. If 10 concerns were competing for business, each of them discriminated in price in all sorts of fashions; yet all of them arrived at the same price, down to the tenth figure beyond the decimal point.

Mr. DOUGLAS. In other words, there was identity of price at a given locality, although prices differed as between localities.

Mr. LONG. Yes. If I may be pardoned for a reference to my own State, let me say that in Louisiana steel would sell for one price at Baton Rouge, at another price at Port Allen, and at another price at New Orleans; yet if sealed bids were requested, and if 10 concerns submitted sealed bids, all the bids of all the concerns would be found to be the same at any given locality.

The same situation existed in the case of cement.

It was by proving that the concerns were arriving at identical prices that the Federal Trade Commission managed to convince the courts that there existed a basing-point pricing system which had the effect of eliminating price competition in the cement industry. Because that was established, the court declared that system to be illegal, because it was in restraint of trade and was in violation of the antitrust laws.

Mr. KILGORE. Mr. President, will the Senator yield?

Mr. LONG. I wish to complete this point, please, before I yield.

Mr. President, that case took 14 years in proceedings and in trials, before it was decided by the Supreme Court. In that case the Federal Trade Commission listened to 49,000 pages of testimony. Mr. President, the MacArthur hearings were nothing, as compared to what the Federal Trade Commission went through in the Cement Institute case. It also took 50,000 pages of exhibits to prove the case. After 14 years, the Court finally outlawed that basing-point pricing system. Yet, now we see an effort being made, by means of this bill, to permit the same thing to be done all over again, by innocently setting up good faith as a complete defense, and writing a committee report which, in my opinion, would make it possible for the same basing-point pricing system to be arrived at all over again.

Now I yield to the Senator from West Virginia.

Mr. KILGORE. Mr. President, probably the Senator from Louisiana remembers the days of the depression; I know I do. I do not know whether he is old enough to remember them.

Mr. LONG. I thank the Senator. [Laughter.]

Mr. KILGORE. Is it not a fact that in Louisiana in those depression days people burned gas—of course, the Senator knows what gas is—in lieu of coal, and therefore the miners of coal in West Virginia, Pennsylvania, Kentucky, and other States starved; they were not even able to buy sugar. Is not that true?

I ask that the RECORD show that the Senator from Louisiana, by nodding his

head, has indicated that he agrees with me.

May I ask the Senator if it is not also a fact, based upon the idea that it would be fine, if it could be worked out nationally—but I am afraid it could not be—for the rates for coal to be maintained on a competitive basis as between the various coal fields, not on a basis—and I say this with the utmost respect for the able Senator from Louisiana, because I do not think he understands the situation, because he does not come from a coal-producing State—that the rates for coal are competitive on coal, without regard to, let us say, sugar in Louisiana, cotton from other States, or various other commodities? I ask the Senator from Louisiana, if we are going into this matter, we ought to go into it on a wholesale basis. Is not that correct?

Mr. LONG. That is entirely true.

Mr. KILGORE. That is, we should go into it for the purposes of taking care of the situation on a wholesale basis, should we not?

The PRESIDING OFFICER. The time of the Senator from Louisiana has expired.

Mr. LONG. Mr. President, will the Senator from Tennessee yield me 10 additional minutes?

Mr. KILGORE. Mr. President, who controls the rest of the time? I should like to ask a few more questions.

The PRESIDING OFFICER. The Senator from Tennessee is in control of the time.

Mr. LONG. I regret that my time is limited. I agree with the statement made by the Senator from West Virginia.

I should like to explain, in reference to the question asked me by the distinguished junior Senator from Minnesota [Mr. HUMPHREY], how a basing-point-price system could be set up. I mentioned that before the Supreme Court in proving that the case involved a situation where price competition was being eliminated, an enormous amount of evidence was presented to prove the identity of prices at all the delivered points, and the identity of bids. Senators will note that the majority report on S. 719 on page 6, makes this statement:

> Where sellers are in fact engaged in price competition, there is no limitation upon the frequency or regularity with which they may meet the equally low price of a competitor, absent any agreement or understanding tending to conspiracy. This is particularly true with reference to freight absorption so as to permit sellers to compete in distant markets with more favorable located competitors.

Mr. President, that is to say that all of the evidence which was presented in the Cement Institute case would be meaningless if presented in court, and that it should not at all tend to prejudice the court against the defendant. On the surface, the situation might smell to high heaven, but the court would not be permitted to base its decision upon the obvious absence of price competition. Then, on page 7 of the report we see this statement:

> When a seller absorbs freight in good faith to meet the lower price of a competitor who is located closer to a customer, and thereby enjoys the benefit of lower transportation charge, he is merely reducing his price in good faith to meet the equally low price of a competitor. Dicta in the Cement case to the contrary has been superseded by the holding of the Supreme Court in the Standard Oil case.

Mr. President, where did the Standard Oil case hold anything like that? It did not say anything at all about it. The Standard Oil case was not a basing-point case; but here we find the Senate committee putting that language into the mouth of the Court, to have it determined legislatively by a committee report that all this is being done in good faith where the producers arrive at identical prices.

Mr. HUMPHREY. Mr. President, would the Senator, as an attorney, simply make note of the fact that the committee has carefully guarded itself by referring to "dicta in the Cement Institute case," which means so much extra fluff which was tossed into the decision. It has no point at all. It is merely a little window dressing, but it makes it appear as though the whole Cement case decision was overruled.

Mr. LONG. Yes. Furthermore, in the Cement case, the Court made the point that the steel company case had the effect of holding that where one person, even in good faith, adopts the pricing system of another concern as his own pricing system, he is thereby not in good faith; and the committee report, in the opinion of the junior Senator from Louisiana, would reverse the decision in the Staley case, which was one of the bases upon which the Court decided the Cement Institute Co. case.

I would now also like to read this comment in the majority report:

> The amendment to the Clayton Act here proposed and the Supreme Court decision in the Standard Oil case will eliminate further need for legislation under the Clayton Act as to freight absorption.

That is tantamount to saying that in the opinion of the committee a basing-point bill will not be needed now in order to legalize basing-point prices; this bill is going to take care of that. It goes on to say:

> The enactment of this amendment would make it clear that freight absorption for proper purposes, approved by the Congress and the public, and herein described, is within the provision of the good-faith proviso of section 2 of the Clayton Act as construed by the Supreme Court in the Standard Oil Co. case.

That is on page 7 of the report.

What this bill is intended to do is obvious. It is intended to permit the cement companies—and, I would assume, the steel companies and probably all the paper companies and others—to go back to using a basing-point pricing system.

In doing so, it would strike at the Robinson-Patman Act, which was passed, first, for the purpose of protecting independent merchants, and, second, in order to outlaw a basing-point pricing system; and in so doing, it would deny the independent merchants of the Nation the protection which they have so long had under the Robinson-Patman Act.

Now, much as some Senators talk about desiring competition, it is pretty clear that there cannot be competition unless there are competitors. Unless we see to it that the independent merchants have a fair chance to compete with the large concerns, unless we see to it that those who are selling goods to both large and small give the small-business man the same break they give the large concern in selling their goods, the large concerns are going to drive the small ones out of business. That is abundantly clear.

It is strange to the junior Senator from Louisiana that some of those who are advocating this bill should say, "This bill changes the antitrust laws, this expands and extends the Supreme Court decision," while others say, "All this bill does is to make the statutory laws conform to the Supreme Court decision." Actually, we know that this will go beyond the Supreme Court decision. It will make it so difficult for the small-business man to obtain any action under the law that we might as well not have the Robinson-Patman Act at all. Therefore, those of us who are opposing this bill believe that if it is permitted to pass, it will be the death knell of a tremendous number of small independent merchants.

The junior Senator from Louisiana this morning asked the Senator from Maryland [Mr. O'CONOR], who authored the majority report, whether it would be legal for the Morton Salt Co. to reduce its price to the A. & P. and the other five major chain stores which had been favored by a 10-percent discount, if they found some small competitor of the Morton Salt Co. which was willing to do the same thing; and the Senator from Maryland answered that that would not be legal under the bill which is pending before the Senate. Mr. President, that is not what the court thought. The dissenting opinion, written by Mr. Justice Black, very clearly spelled out that that is exactly the kind of thing which would happen if the Supreme Court so decided, even without Senate bill 719. They did not need that in order to do it. I read what Mr. Justice Reed said in that case, quoting from about the middle of page 12 of the dissent:

> Yet adoption of petitioner's position—

Meaning the good-faith defense of the Standard Oil Co. of Indiana—

> would permit a seller of nationally distributed goods to discriminate in favor of large chain retailers, for the seller to give the large retailer a price lower than that charged to small retailers, and could then completely justify its discrimination by showing that the large retailer had first obtained the same low price from a local low-cost producer of competitive goods.

Mr. President, when the junior Senator from Louisiana asked the Senator from Maryland if this bill would permit that, he said it would not. When I asked the Senator from Colorado [Mr. JOHNSON] if the bill would permit that, he also said it would not. Yet, Mr. President, that is what three Justices of the Supreme Court thought about it.

The Senator from Colorado made a statement to the effect that the junior Senator——

The PRESIDING OFFICER. The time of the Senator from Louisiana has expired.

Mr. KEFAUVER. Mr. President, I yield the Senator from Louisiana such additional time as he may require.

Mr. LONG. I thank the Senator from Tennessee.

Mr. President, I do not need to plead ignorance about the Standard Oil Company of Indiana case. Possibly some Senators might want to plead ignorance about it, but I have made a careful analysis of the case. It was a case in which the Standard Oil Company of Indiana was discriminating in favor of four large customers, and those large customers were receiving a 2-cent additional discount from the Standard Oil, and in turn, reducing the price 3 cents a gallon and ruining competitors who were not so favored.

Of course, we are all in favor of the Standard Oil Co. reducing its prices. In Louisiana we would be pleased to see them do so, but we do not think they should reduce their prices to only four customers. We think that when they reduce their prices, they should reduce them to everyone. We are for lower prices for everyone, not merely for lower prices to help to create a monopoly, or for some other improper purpose. We are for lower prices for the benefit of all consumers. We do not think that lower prices, when engaged in for the purpose of destroying competition, in the long run, help anyone.

Mr. President, I think Senators would be interested to look at the so-called Mother Hubbard case in which the Government alleged that 75 percent of the filling stations in America are owned by the large oil companies. I have been told that those companies built only 4 percent of the stations. How did they get the other 71 percent? They got many of them by means of their discriminatory pricing, in large measure. In the old days when great trusts were being built, it was the usual practice, I am informed, for large concerns to reduce the price to one station and leave the price higher to another station. It would not be long before the station which was receiving a discriminatory price would drive the other station out of business. Then the oil company would buy the unfortunate man's station for a mere pittance. It could then run the station across the street out of business by raising the price of his gasoline and lowering the price of gasoline to the newly acquired station.

At all events, they now own 75 percent of the filling stations. The kind of thing we see in the case of the gasoline industry leaves the independent owner completely at the mercy of the large oil companies. They already have 75 percent of the stations, and have only 25 percent to go. As to the Standard Oil Co. decision, the chances are that the large oil companies would not have too much difficulty in taking care of the remaining 25 percent of the independent filling stations if they so desired.

I should hate to have happen to the independent merchants selling drugs, groceries, hardware, and drygoods what has happened in the case of gasoline stations being taken over by the large companies. I should hate to see the day come when the 100 largest retailers in the United States no longer do 15 percent of the Nation's business, but do 85 or 90 percent of it. If we are going to prevent that situation, in my opinion, we had better see to it that the large concerns do not receive the favoritism that would enable them to drive the small-business concerns out of business.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. LONG. I yield.

Mr. HUMPHREY. I am sure the Senator is familiar with what happened in the produce business in the rural areas of the country, where hundreds of thousands of small firms, independently owned and operated, were driven out of business by Swift & Co., Armour, and other large concerns. First of all, they put trucks on the road, paid higher prices, and brought commodities into the market. They drove the little firms out of business and then dropped the number of deliveries of commodities.

That is another example of what happened in the oil business. The only thing that stopped them, according to the record, was the Robinson-Patman Act which was passed in the late 1930's.

Will the Senator from Louisiana differentiate for the Senator from Minnesota between Senate bill 719 and the conditions which existed under the Clayton antitrust law before the enactment of the Robinson-Patman Act? What is the difference, if any?

Mr. LONG. Before the Robinson-Patman Act was passed one of the main differences was that the old good-faith defense was wide open; anyone could discriminate as much as he wanted to. That is one of the main differences.

Then, too, there was no limit upon quantity discounts. If the A. & P. or the Safeway stores or other large chain stores were able to buy in enormous quantities, there was no limit as to how far a supplier could discriminate in price based upon quantity discounts.

Then if discrimination was driving one small merchant out of business he could get no protection unless it were shown that competition was being injured all over the market area. All of that, of course, will go by the board if we open up any one of these loopholes.

Mr. HUMPHREY. What does Senate bill 719 do?

Mr. LONG. The good-faith defense will be a big enough loophole for all the large concerns to get through.

Mr. WHERRY. Mr. President, will the Senator yield?

Mr. LONG. I yield.

Mr. WHERRY. I am wondering if the Senator from Louisiana is about to conclude his remarks, so that the Senator from Nevada [Mr. MALONE] may proceed. If the Senator cares to make further remarks later, I shall be glad to remain.

Mr. LONG. I shall conclude in a few moments.

Mr. President, let us look at the things that have been going on in this country, and which are going on up to the present time. In my opinion, one of the most favorable decisions for small business was the decision in the case of Federal Trade Commission against Morton Salt Co., decided in Three Hundred and Thirty-fourth United States Reports, at page 337. In that case it was found that the Morton Salt Co. had been giving major discounts to large concerns. If a concern purchased less than a carload, they would buy their salt at $1.60. If it purchased a carload lot, they would pay somewhat less. If they purchased more than 50,000 cases in 12 months, they would pay $1.35 per case.

The difference was such that the independent merchant, owning one little store, had to pay more than 10 percent over what the five largest chain stores of the Nation had to pay. There are only five chains in the Nation big enough to buy salt in large enough quantities to get the benefit of the full discount. They are American Stores, National Tea Co., Kroger Grocery Co., Safeway Stores, Inc., and the Great Atlantic & Pacific Tea Co.

The Court, in its decision, very wisely said that this was an unjustified quantity discount and that the discount was such that it endangered the existence of the independent competitors of the five chain operators. The effect of the decision was that quantity discounts would have to be limited to what could be justified by the economics of mass distribution or the economics of mass production, and the burden was upon the Morton Salt Co. to prove that there was a sufficient saving to justify the tremendous discounts. The result was that the discounts were prohibited.

Of course, once these large concerns find a loophole through the law big enough for all of them to get through, the law will be useless. Only one opening is needed to get through a fence or one door to enter a house. Once these large concerns find a loophole as big as the one provided by this bill, and they can find a small competitor who would offer to sell at a very low price to the five great chain concerns, the Morton Salt Co. would then be justified in reducing its price to whatever price the small concern offered.

Mr. KEFAUVER. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Louisiana yield to the Senator from Tennessee?

Mr. LONG. I yield.

Mr. KEFAUVER. If even small business would offer a low price to one of the big concerns, then under the report which accompanies the bill the Morton Salt Co. could sell to all the five big concerns and give them these discounts and discriminate against the small-business men. Is that not correct?

Mr. LONG. I believe that is true. It is also the opinion of the Senator from Louisiana that it would be a completely open question, but that it might be possible, even without any offer being made by any competitor, for discrimination to be practiced on the theory that unless

it were the five major chain concerns might mine their own salt. That would be an open question. There is no way we could be sure that that would not be a good defense unless and until we had several years to litigate the matter and the Supreme Court had passed on the question.

The Court pointed out in that case, Mr. President, that even though salt were only a minor item in the sales of a grocery store, to permit this kind of discrimination in the sale of salt would mean that the same kind of practice would have to be permitted with regard to all the other things a grocery store carries, and that would mean, if it were done and practiced in that fashion, that all the independent merchants could conceivably be injured in business; many of them run out of business.

I should like to read the Court's language from volume 334, United States Reports, page 48:

It is also argued that respondent's less-than-carload sales are very small in comparison with the total volume of its business and for that reason we should reject the Commission's finding that the effect of the carload discrimination may substantially lessen competition and may injure competition between purchasers who are granted and those who are denied this discriminatory discount. To support this argument, reference is made to the fact that salt is a small item in most wholesale and retail businesses and in consumers' budgets. For several reasons we cannot accept this contention.

There are many articles in a grocery store that, considered separately, are comparatively small parts of a merchant's stock. Congress intended to protect a merchant from competitive injury attributable to discriminatory prices on any or all goods sold in interstate commerce, whether the particular goods constituted a major or minor portion of his stock. Since a grocery store consists of many comparatively small articles, there is no possible way effectively to protect a grocer from discriminatory prices except by applying the prohibitions of the act to each individual article in the store.

Mr. President, that seems pretty clearly to demonstrate that the pending bill is extremely dangerous to small business. The bill is an attempt to expand and broaden one of the worst setbacks the small-business people have taken before the courts in recent times. Therefore the junior Senator from Louisiana submits that either the bill should be drastically amended to reverse its original purpose, or else it should be defeated.

Mr. President, I ask unanimous consent to have printed in the RECORD as a part of my remarks excerpts from the November issue of the National City Bank (N. Y.) Monthly Letter on Economic Conditions Government Finance, dealing with the 100 largest retailers.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

THE 100 LARGEST RETAILERS

A group of the country's 100 largest retail trade corporations, based upon volume of sales reported for the 1948 calendar or nearest fiscal year, shows a combined total of sales exceeding $19,000,000,000. Despite the fact that their sales more than trebled during the past 10 years, they still represent about the same proportion, around 15 percent, of the national totals, which according to the Department of Commerce expanded from $38,000,000,000 in 1938 to $130,000,000,000 in 1948. An important factor in the increase of dollar sales was, of course, the general inflation in incomes and prices. The rise in average retail prices amounted to 91 percent over the period.

On the $19,000,000,000 of sales last year by the 100 largest organizations, the average net profit was 3½ cents per sales dollar. The average for 18 food chains was 1.3 cents, for 25 variety and other chains 5.1 cents for 52 department and specialty stores 4.1 cents, and for 5 mail-order houses 5.6 cents.

Of this over-all average profit of 3½ cents, 1½ cents was distributed in preferred and common dividends, while 2 cents was reinvested for improvements and additions to store properties and equipment, and for building up working capital to handle the increased dollar volume of business.

The accompanying list of the 100 largest retailers is based upon publicly reported sales, and includes several which not only operate stores but also process food or manufacture clothing, shoes, and other goods.

These 100 organizations operate a total of 29,278 stores of widely varying size. They range from the small drug or shoe store having sales of a few thousand dollars monthly, to supermarkets grossing over $1,000,000 annually, and to a mammoth department store, carrying over 400,000 separate items of almost everything under the sun, and having sales in the Christmas season exceeding $1,000,000 daily. The group furnishes employment to a total of approximately 1,145,000 men and women, and is owned by 769,000 registered shareholders, many of whom are also employees.

Composite income account of the 100 largest retail trade organizations reporting for the year 1948

	Total (millions)	Cents per sales dollar
Net sales	$19,258	100.0
Net earnings before taxes	1,114	5.8
Federal income taxes	431	2.3
Net income	683	3.5
Dividends paid	298	1.5
Income reinvested	385	2.0

100 largest United States retail trade corporations, based upon reported sales for 1948, calendar or nearest fiscal year

[In millions of dollars]

Chains—Food:	
Albers Super Markets	46
American Stores Co	417
H. C. Bohack Co	100
Colonial Stores	169
Dixie-Home Stores	42
First National Stores	354
Fisher Bros	69
Food Fair Stores	142
Grand Union Co	116
Great A. & P. Tea Co	2,837
Jewel Tea Co	154
Kroger Co	826
Lucky Stores	31
National Tea Co	270
Red Owl Stores	69
Safeway Stores	1,277
Stop and Shop	46
Winn & Lovett Grocery Co	81
Chains—Variety, etc.:	
A. S. Beck Shoe Corp	42
Davega Stores Co	25
Edison Bros. Stores	75
Gamble-Skogmo, Inc	152
W. T. Grant Co	234
H. L. Green Co	102
Katz Drug Co	27
G. R. Kinney Co	35
S. S. Kresge Co	289
S. H. Kress & Co	165
McCrory Stores Corp	98
McLellan Stores Corp	56
Melville Shoe Corp	84
Chains—Variety, etc.—Continued	
G. C. Murphy Co	138
Neisner Bros	58
J. J. Newberry Co	135
Peoples Drug Stores	47
Reliable Stores Corp	25
Rexall Drug, Inc	174
Shoe Corp. of America	38
Thrifty Drug Stores Co	44
United Cigars-Whelan Stores	77
Walgreen Co	163
Western Auto Supply Co	126
F. W. Woolworth Co	624
Mail order:	
Alden's Inc	[1] 88
Montgomery Ward & Co	1,212
National Bellas Hess	27
Sears, Roebuck & Co	2,296
Spiegel, Inc	135
Department and specialty:	
Allied Stores Corp	419
Associated Dry Goods Corp	151
Barker Bros. Corp	33
Best & Co	39
Bond Stores	84
Broadway Department Store	54
Lane Bryant, Inc	[2] 36
Bullock's, Inc	117
Burdine's, Inc	27
Carson Pirie Scott & Co	69
City Stores Co	168
Consolidated Retail Stores	36
Crowley, Milner & Co	26
Davidson Bros	32
Emporium Capwell Corp	63
The Fair	37
Federated Department Stores	347
Marshall Field & Co	225
Gimble Bros	307
Goldblatt Bros	95
Grayson-Robinson Stores	74
Hale Bros. Stores	29
Halle Bros. Co	40
Hearn Department Stores	34
Hecht Co	83
Higbee Co	42
Joseph Horne Co	54
Howard Stores Corp	31
Interstate Department Stores	67
Kabacher Stores	29
Lerner Stores Corp	127
R. H. Macy & Co	315
Mandel Bros	36
Mangel Stores Corp	27
May Department Stores Co	407
Meier & Frank Co	44
Mercantile Stores Co	119
Miller-Wohl Co	28
National Department Stores Co	90
Ohrbach's Inc	39
J. C. Penney Co	885
Rich's Inc	49
Richman Bros. Co	41
Rike-Kumler Co	29
Ed. Schuster & Co	41
Scruggs-Vandv't-Barney	57
Stix, Baer & Fuller Co	48
Thalhimer Bros	25
Western Department Stores	30
Wieboldt Stores	60
Woodward & Lothrop	39
Younker Bros	37

[1] 13 months.
[2] 8 months.

The above classifications are not clear-cut, and numerous companies overlap. In certain cases, the sales totals given include some wholesale as well as retail business. The list excludes several of the larger stores which do not publish sales figures, such as B. Altman & Co., Block & Kuhl Co., J. L. Hudson Co., Stern Bros., Strawbridge & Clothier, and John Wanamaker.

As shown by the composite income account, one of the major items of expense in retailing today, aside from the cost of goods purchased, and from wages and salaries, is taxes. Federal income-tax liability of this group for 1948 totaled $431,000,000, which represented an average of 2.3 cents out of

every sales dollar. Total direct taxes—Federal, State, local, and foreign, but excluding sales taxes collected from customers—according to complete tax details reported by companies having over four-fifths of the total net income, may be estimated for the entire group at approximately $625,000,000. This represented an average of about 3.2 cents per sales dollar, or $21,300 per store, or $546 per employee. It is more than twice as large as the dividends, totaling $298,000,000, paid to shareholders. The latter's investment at the year-end aggregated $4,100,000,000, or $3,600 per employee, computed on net assets at their stated book values, which in most cases are far below present-day replacement costs.

Although detailed expense figures showing wage and salary payments are not reported by most retailers, 22 of the larger organizations that do give such data showed total payrolls of $869,000,000, which was more than 9 times the $91,000,000 dividends paid by the same companies.

Mr. MALONE. Mr. President——

Mr. WHERRY. Mr. President, I yield 20 minutes to the Senator from Nevada [Mr. MALONE].

May I inquire of the distinguished Senator from Tennessee [Mr. KEFAUVER] if there are to be any more speakers after the Senator from Nevada concludes his remarks tonight?

Mr. KEFAUVER. I believe not. But before the Senator from Nevada begins his speech I should like to ask him to yield to me so I may place two matters in the RECORD. I believe there will be no more speeches on the bill this evening.

Mr. MALONE. I am very happy to yield to the Senator from Tennessee for that purpose.

Mr. KEFAUVER. Mr. President, I ask unanimous consent to have printed at this point in the RECORD a letter addressed to me under date of August 1, 1951, by Stephen J. Spingarn, member of the Federal Trade Commission, relating to Senate bill 719.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

FEDERAL TRADE COMMISSION,
August 1, 1951.

Hon. ESTES KEFAUVER,
United States Senate,
Washington, D. C.

DEAR SENATOR KEFAUVER: On April 18, 1951, the Federal Trade Commission in a report to the Senate Judiciary Committee on S. 719, the pending basing-point bill, made a specific recommendation for amendment to meet our objections to the bill. You have today orally requested my opinion whether certain amendments to S. 719, which differ somewhat in form from the amendment previously proposed by the Commission would substantially meet our objections.

My understanding of the amendments that you now propose to S. 719, as reported to the Senate, are as follows:

1. On page 2, line 5, after the word "competitor" insert a comma and the following: "unless the effect of the discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce."

2. On page 2, lines 5 through 9, strike out the colon and all of the proviso which follows it.

Subject to one qualification, I believe that the foregoing amendments would substantially carry out the underlying purposes of the Commission's previous recommendation on the bill. The only qualification is that if the foregoing amendments were adopted, subsection (b) of section 2 of the Clayton Act, as amended (which is another subsection of the same section of that act which this bill would amend), would still contain a proviso dealing with the good-faith defense which, as interpreted by the Supreme Court in the Standard Oil Co. decision last January, would be different from and inconsistent with your proposed amendments quoted above. The existing proviso in section 2 (b) reads as follows: "*Provided, however,* That nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor."

I would therefore recommend that, if the two amendments to S. 719 set out above are made, a further amendment should be adopted striking out from section 2 (b) of the Clayton Act the proviso above quoted and ending that subsection (b) with a period after the phrase "an order terminating the discrimination." This would eliminate a possible future source of confusion and uncertainty as to the status of the good-faith defense.

Sincerely,

STEPHEN J. SPINGARN,
Commissioner.

Mr. KEFAUVER. Mr. President, earlier today I gave my answer to the first point set forth in the report of the Small Business Committee in favor of the bill. I did not give my answers to the other nine points. I have a memorandum of my answers to the other nine points which I had intended to present to the committee. I now ask unanimous consent that the memorandum answering the other nine points in favor of the passage of the bill may be printed in the RECORD at this point.

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

2. S. 719 WOULD ELIMINATE THE PRESENT CONFUSION SURROUNDING FREIGHT ABSORPTION AND THE MEETING OF COMPETITION IN GOOD FAITH—BY CLARIFYING EXISTING LAW, THE BILL WOULD REMOVE UNCERTAINTY FROM THE MINDS OF HONEST BUSINESSMEN INTENT ON COMPETING VIGOROUSLY AND EFFECTIVELY

Of all the arguments advanced on behalf of S. 719, perhaps the most persistent is the contention that legislation is necessary in order to eliminate the confusion surrounding the question of freight absorption. In the last Congress this argument was made again and again; S. 1008 was needed in order to clarify the right of businessmen to absorb freight. Apparently this same argument has been reiterated, ad nauseam, before the Senate Small Business Committee.

Since what is being urged—at least publicly—is the right to absorb freight independently to meet individual competitive situations, the witnesses supporting S. 719 have no grounds for their uncertainty. That the present law permits individual firms to absorb freight independently has been made clear over and over again. The Federal Trade Commission has time and again stated that freight absorption is not illegal, per se. Despite many attempts in various quarters to create confusion as to the Commission's position, its stand on this point has always been the same—freight absorption in and of itself is not illegal. The Commission, itself, has taken notice of these attempts to confuse its position. In a press release of June 10, 1950, accompanying its cease-and-desist order in the Corn Products case, the Commission said:

"Some statements made in newspapers and over the radio failed to make clear that the proposed order would prohibit use of basing-point and zone systems of pricing only when such systems involve concerted action, conspiracy, or unlawful agreements among sellers of corn products."

Moreover, as recently as June 15 of this year the Commission in a proposed order in its present steel case, involving the use of the basing-point system by almost the entire steel industry of the country, stated:

"The Federal Trade Commission is not acting to prohibit or interfere with delivered pricing or freight absorption as such when innocently and independently pursued, regularly or otherwise, with the result of promoting competition."

But the supporters of S. 719 are not satisfied with these statements by the Commission. They do not make the outright accusation that the Commission is lying. They merely state that they are uncertain. If the Commission is not a high enough authority to suit them, then let us turn to the statement by the President in vetoing the predecessor measure, S. 1008. Here is what the President had to say:

"Thus it is quite clear that there is no bar to freight absorption or delivered prices as such."

Mr. President, I ask how many assurances do our opponents want?

In view of the obvious legality of freight absorption, the insistent arguments for further clarification can only lead to one of two conclusions—either the supporters of S. 719 are uninformed as to the status of the law, or the real goal is something more than the right to absorb freight independently. In regard to the first possibility, a majority of the witnesses who appeared before the Senate Small Business Committee in behalf of S. 719 seemed to be uninformed on the legal points at issue. This, of course, could be expected since most of these witnesses were businessmen rather than lawyers. The one lawyer who did appear in support of the measure, the counsel for the Westvaco subsidiary of the International Food & Chemical Corp., conceded that under the law as it now stands, independent freight absorption is probably permissible. It is interesting to note that not a single witness advanced the proposition that the law as it now stands prohibits freight absorption per se. They were all just worried; they wanted further clarification.

The other possibility, of course, is that the real objective of S. 719 is something more than its stated purpose. It is not inconceivable that what the supporters actually seek in S. 719 is not merely the right to absorb freight independently, but the right to absorb freight systematically, as under a basing-point system. During the course of debate on S. 1008 and in S. 719, their supporters have refrained, either deliberately or otherwise, from stating that such is their real purpose. Certainly, both of these measures would have the practical effect of restoring the basing-point system. Yet while its restoration is obviously one of the most far-reaching effects of S. 719, no one rises to defend the measure on these grounds. Rather, they confine their arguments to the right to absorb freight independently—a right which they now have under the law and which no one is trying to take away.

So, Mr. President, I say on this question of the need for clarification, the supporters of S. 719 are either misinformed as to the law, or they are actually seeking something more than their stated objectives. If I am mistaken—that is, if they are not misinformed and if they are not seeking something more than they profess—then I think they are obligated to join those of us who have proposed an amendment to S. 719, which, while guaranteeing the right to absorb freight independently, prohibits the lessening of competition through the systematic absorption of freight.

3. THE OPPONENTS OF S. 719 DO NOT BELIEVE IN REAL COMPETITION. THEY ADVOCATE "SOFT" COMPETITION SIMPLY BECAUSE UNDER THAT KIND OF COMPETITION NOBODY GETS HURT. THEY FAVOR "SOFT" COMPETITION IN SPITE OF THE FACT THAT SUCH COMPETITION DOES NOT BRING BETTER GOODS TO CUSTOMERS AT LOWER PRICES

Mr. President, in the course of the debates on S. 1008 and on S. 719 we have heard a lot about "hard" and "soft" competition. It is maintained that the right to discriminate results in "hard" competition, and that any circumscribing of this right results in "soft" competition. Since everybody is for competition, everybody must be for vigorous—that is "hard" competition. Restraints on the vigor of the competitive process result in ineffective or "soft" competition, thereby depriving the consumer of the benefit of more goods at lower prices. In other words, if you want to help the competitive process and the consumer, you believe in "hard" competition; if you want to weaken competition and injure the consumer, you believe in "soft" competition.

Of all the ideas which have been advanced in the course of the debates, I regard this as the most plausible. Yet its plausibility is exceeded only by its historical inaccuracy. In our minority report we pointed out that the tactics of the old trusts, such as the old Standard Oil Trust, around the turn of the century constituted the essence of "hard" competition. The trusts picked off their smaller competitors one by one through the use of vicious predatory practices. Their principal weapon was price discrimination. They would go into a community, cut the price to a level which the local producer could not possibly meet, drive him out of business, obtain a monopoly, and then raise the price to higher levels than ever before. The ability of the trusts to make these discriminatory invasions was based on their greater size—their ability to finance losses in one community through profits gained in other areas where they had already obtained a monopoly. During the period when these discriminatory attacks were being made, prices of course were quite low; the consumer, for a short time benefited, but these benefits were only temporary. After the smaller competitors had been driven out of business, the trusts followed the old monopoly game of raising their prices to higher levels than had existed before the attack. This is what is meant by "hard" competition. But is it the type of competition we want in our economy?

* * * * *

Mr. President, these examples merely serve to illustrate the obvious fact that "hard" competition in the short run means monopoly in the long run. It means monopoly in the long run because without rules to assure fair play, the biggest will always win out. That is to say, without rules to prohibit such unfair practices as price discrimination, the large concerns will always win out over the small. They will win out because being larger they can apply such practices on a wider scale and continue them for a longer duration than their smaller rivals. If we do not want to see the large triumph over the small, merely because they are large, we must have rules of fair play in the business world. And the most important of these rules is the Robinson-Patman Act which permits the large to have an advantage over the small only to the extent that that advantage can be justified on the basis of efficiency.

Actually price discrimination is a form of "soft" rather than "hard" competition. It is "soft" competition because it is much easier for a seller to make price concessions to just a few favored buyers than to make a direct price cut across-the-board to all buyers. Price discriminations to the favored few are the "soft" way of competing; across-the-board price reductions are the "hard" way of competing. Thus, it can be seen that the terms have been switched around Instead of inducing "soft" competition, the Robinson-Patman Act actually promotes "hard" competition; instead of being a form of "hard" competition, price discriminations are actually the easiest way out—they are "soft" competition.

In essence, the supporters of S. 719 have employed a neat trick of semantics; they have stated that predatory attacks by large corporations which drive their smaller rivals out of business and result in the complete elimination of competition constitute "hard" competition; they have stated that attempts to restrain these attacks and preserve competition constitute "soft" competition; they have stated that the easy way of competing constitutes "hard" competition; and they have stated that the difficult way of competing constitutes "soft" competition. With such a shifting of semantics, it is not surprising at all that many Members of the Senate are confused on this bill.

4. S. 719, CONTRARY TO THE ARGUMENTS OF ITS OPPONENTS, WILL PROMOTE COMPETITION AND BENEFIT THE CONSUMING PUBLIC IN THE FORM OF LOWER PRICES

The argument that S. 719 would result in lower prices to the consuming public would indeed be valid if it were the custom of monopoly to charge low prices. This is true because S. 719 permits price discriminations even if they "tend to create a monopoly."

It is true, as I have pointed out, that large corporations frequently employ the tactic of temporarily charging low discriminatory prices as a means of driving their smaller competitors out of business and obtaining a monopoly position. But, as everyone knows, the low discriminatory prices which prevail during the process of destroying competition are merely transitory; they are preludes of higher prices to come.

What the consumer should be, and actually is, interested in is not the short-range concessions which might be made in a discriminatory price attack, but in the long-range level of prices. If, as a result of discriminatory price attacks, competition is destroyed and the long-range level of prices is enhanced, the price concessions which were made during the attack are not worth the candle. The consumer obviously loses much more than he gains. Thus, the question at issue here is whether or not prices would be lower under monopoly—which, of course, could be created under S. 719—than under competition. A 5-year-old child knows the answer.

I would like to cite the way in which the infusion of competition affects monopoly-controlled prices. In the aluminum industry the Aluminum Co. of America for many years prior to World War II had enjoyed a virtual monopoly in the aluminum industry. However, shortly after the outbreak of the war in August 1939 a competitor, the Reynolds Metal Co., began to loom on the horizon. In early 1940 the Aluminum Co. of America began to reduce its price from the 20-cent level which had prevailed without change from March 1937. The price was lowered from 19 to 18 to 17 cents and then in September 1941 to 15 cents. Meanwhile the Reynolds Metal Co., which in 1940 began the production of aluminum, announced that its initial price would be approximately 12 cents a pound, and that a 2-cent reduction would be effected after the machinery and men were broken in. All of us have noted the tremendous expansion in the demand for aluminum products which has occurred since new competition brought lower prices to that industry.

This type of example can be repeated many times over. It is competition, not monopoly, which reduces prices. It is the maintenance of competition not the promotion of monopoly which benefits the consumer.

5. S. 719 BY PERMITTING BUSINESSMEN TO ABSORB FREIGHT, WOULD BENEFIT SMALL SELLERS AND ENABLE THEM TO COMPETE IN DISTANT MARKETS. THE BILL WOULD THUS RELIEVE SMALL SELLERS OF THE NEED TO RELOCATE PRESENT FACILITIES AND TO BUILD EXPENSIVE BRANCH PLANTS IN OUTLYING MARKET AREAS

First of all, I would like to point out that implicit in this argument is the assumption that small sellers are today denied the right to absorb freight. As I have already stated, the law, as it now stands, does not prohibit freight absorption, as such. The small sellers are free to absorb freight to their hearts' content, as long as they do not participate in some sort of price-fixing scheme, such as the basing-point system.

Hence, the argument is relevant to this discussion only if the supporters of S. 719 are contending that small sellers should have the right to absorb freight systematically, as under the basing-point system. Or put it another way; does the basing-point system help small sellers to compete in distant markets?

Under the basing-point system, small sellers can, of course, compete in distant markets—but at the expense of losing their own markets which are preempted by large distant producers. As was already pointed out in hearings on S. 719, the steel mills in Birmingham, St. Louis, and Colorado lost a substantial portion of their own natural markets to the distant Northeastern mills. This, of course, would be expected under the basing-point system, since the local buyer had no incentive to purchase from the local mill.

I would like to cite a few examples presented to the Senate Small Business Committee of the loss by these outlying mills of their own markets under the basing-point system.

"The nine Alabama counties immediately surrounding Birmingham obtained no less than 37.4 percent of their structural shapes from distant sources, most of which (27.9 percent) came from Chicago. The same situation holds true with respect to the Southern States, generally, with their purchases of structural shapes from northern mills, as a percent of their total purchases, ranging from 33.5 percent in the case of Georgia to 82.1 percent in the case of Texas.

* * * * *

"In the case of plain drawn wire, although the Birmingham mills had a sharp freight advantage in Tennessee, they supplied only 26 percent of Tennessee's requirements.

* * * * *

"St. Louis had a 'freight advantage' in many Western States, including Iowa, Missouri, Nebraska, Kansas, Oklahoma, and Colorado. To have supplied these areas the St. Louis mills would have had to produce more than 6,000 tons. As against a consumption figure of over 6,000 tons in its own natural market, the actual production of hot-rolled sheets by the St. Louis mills was only 2,647 tons. This presents a striking paradox. To have supplied their own natural area the St. Louis mills would have been forced to triple their own output; yet at the time the TNEC survey was made they were operating at only 70 percent of capacity."

Because they lost their natural market to the northeastern mills the Birmingham, St. Louis, and Colorado mills then had to go into distant markets to find customers elsewhere. In selling to these distant customers they usually had to absorb freight, thereby taking a lower mill net price.

The material presented in the hearings also shows that since the elimination of the basing-point system the Birmingham, St. Louis, and the Colorado mills have been enjoying a tremendous expansion, which the conservative trade journal, Business Week, attributes principally to the elimination of the basing-point system.

Small sellers in the outlying areas who advocate the return of a pricing system

which denies them the benefit of their own natural location are, in effect, committing hara-kiri.

6. S. 719, BY PERMITTING SELLERS TO ABSORB FREIGHT, WOULD BENEFIT THE SMALL BUYER BY FORCING A MAXIMUM NUMBER OF CONCERNS TO COMPETE FOR HIS BUSINESS. S. 719 WOULD THUS PROTECT BUYERS BY INCREASING THE AMOUNT OF COMPETITION PREVAILING AMONG SELLERS

The witnesses supporting S. 719 endeavored to convince the Senate Small Business Committee, by a form of tortured reasoning, that price discrimination helps small buyers, that is, small merchants.

I presume that is why small merchants, facing extinction in the early thirties as a result of the discriminatory tactics of the chain stores, demanded and secured the passage of anti-discrimination statutes in most of the individual States.

I presume that is why the small merchants supported the Robinson-Patman Act with every resource at their command.

And now I presume that is why the small merchants are now bitterly opposing the enactment of S. 719.

Which are we to believe—an awkward, cumbersome form of reasoning advanced by the bill's supporters to the effect that mail merchants will be helped by this bill, or the reasons advanced by the small merchants, themselves, to the effect that they will be seriously injured. Who, may I ask, knows more about the problems of the small merchants than the small merchants themselves?

Every important organization of small merchants in the country, including the National Association of Retail Druggists, the National Association of Wholesale Grocers, the National Federation of Independent Tire Dealers, and the National Congress of Petroleum Retailers appeared before the Senate Small Business Committee in opposition to S. 719. In addition to these organizations, individual small merchants appeared to give their reasons why S. 719 should not be enacted.

Why are small merchants so vigorously opposed to price discrimination? When price discriminations are made, they are usually granted to the large merchants. It is the chain stores and the department stores which receive the benefit of price discriminations. Generally speaking, the larger the store, the more discriminations it receives. Obviously, the small merchants do not want to have to pay a high price for their merchandise while their larger competitors are paying a low price. It is as simple as that.

An example of the extent of price discriminations against small and in favor of large buyers was presented by Commissioner Stephen Spingarn, of the Federal Trade Commission, who cited the results of an investigation by the Commission in a proceeding looking toward the establishment of a limit for the quantity pricing of tires.

This investigation revealed that the more than $830,000,000 market for replacement tires in 1947 was divided almost equally between less than 2 percent of about 50,000 distributors having annual volumes of from $100,000 to almost $50,000,000 and more than 98 percent of such distributors with annual volumes of less than $100,000. It also disclosed that these relatively few large distributors were the beneficiaries of price discriminations against the smallest distributors in amounts ranging from about 16 percent to 30 percent on passenger tires and from about 20 percent to 40 percent on truck tires.

In their testimony before the Senate Small Business Committee, the small merchants pointed out a number of ways in which the big buyers could get large price discriminations without violating S. 719. For example, a chain store could take all of the output of a small producer at a very low nondiscriminatory price, whose output, however, would be sufficient to supply only a small proportion of the chains needs. Then the chain could go to the big suppliers and get from them equally low but discriminatory prices, since they would merely be discriminating in good faith to meet a lawful price. The effect of such discriminations when cumulated among many items could be sufficient to enable the chain to drive its smaller competitors out of business and monopolize the market.

In their testimony the small merchants and representatives of their organizations described the widespread concessions which had been customarily granted to the chain stores and other big buyers before the enactment of the Robinson-Patman Act; they cited instances where the chain stores were receiving such large discounts that they were able to sell their goods profitably at retail at a lower price than the small merchants could purchase them at wholesale; they indicated a complete familiarity with the good-faith loophole in the old Clayton Act, which, in their opinion, was largely responsible for making that law ineffective; they were quite outspoken in their fears that if good faith is once again made a complete defense it will destroy the Robinson-Patman Act just as it destroyed the Clayton Act.

Mr. President, I hope that before taking a position on this measure every member of this body will read the statements against S. 719 made by these small merchants and their organizations. Their testimony clearly reveals a sound grasp of the law, a well-rounded knowledge of the history of price discrimination, and a keen awareness of the dangers to themselves and to the free enterprise system represented by monopolistic practices, particularly price discrimination. These small merchants are to be found in large numbers throughout every State in the Union. They are the backbone of what we generally refer to as "small business." And, Mr. President, they feel strongly against this bill—very strongly against it.

7. THE AMENDMENT TO S. 719 PROPOSED BY THE FEDERAL TRADE COMMISSION SHOULD BE REJECTIED BECAUSE IT WOULD REVERSE THE SUPREME COURT AND VITIATE THE PURPOSES OF THIS BILL

The amendment proposed by the Federal Trade Commission is a compromise. As the Robinson-Patman Act now stands, it prohibits price discriminations the effect of which may be: (1) substantially to lessen competition; (2) tend to create a monopoly; or (3) to injure, destroy, or prevent competition with any person.

With respect to (3) that is, discriminations which only injure individual competitors, as contrasted to competition, the Commission proposes that "good faith" be a complete defense. In other words, insofar as injury to competitors is concerned the Commission supports S. 719.

However, with respect to (1) and (2)—that is, discriminations which are on such wide a scale as to lessen competition, generally, or tend to create a monopoly, the Commission feels that a showing of good faith should not be a complete defense. Where the discriminations are on this wide a scale, the Commission is of the opinion that the spirit in which they are made should not override the havoc which they wreak. In these cases of serious price discrimination which injure competition, generally, the Commission believes that the good faith defense should be a procedural defense, not an absolute defense.

To disagree with the Commission on this point is to put motive above effect, to put intent above result. What, actually is the purpose of antitrust laws—to give license to the pure in heart or to preserve competition and prevent monopoly? Monopoly is monopoly regardless of whether it is created by pure men with good intentions or evil men with bad intentions. As one of the witnesses said, "We must keep our eye on the rat and the rat is monopoly."

8. The frequency or regularity with which identical prices are achieved in an industry cannot, under the bill, be regarded as proof of collusion. Since S. 719 permits a seller only to meet and not beat his competitor's price, it is inevitable that competition will frequently result in like prices for like goods.

I have only one observation to make with respect to this last argument advanced by the supporters of S. 719. During the course of the debate on the predecessor measure, S. 1008, its sponsors insisted that it was not their intent or purpose to restore the collusive basing-point system. They merely wished to assure business the right to independently absorb freight. In the course of the debate on this measure I find that no one rises to defend the collusive basing-point system. Everyone seems to be agreed that as practiced in the cement industry, the basing-point system was an instrument of collusion, and, therefore, unquestionably illegal. Now the question which I wish to ask is this: Granted that basing-point systems of the type which existed in the cement industry are collusive, just how is the collusion to be proved if the courts are to be denied the right to weigh along with other evidence the economic evidence of the system's operations, and effects? The majority report on S. 719 states that while evidence of price identity is admissible under a charge of conspiracy "no adverse inference may be drawn." This injunction applies to the period of time during which the prices are identical, the rigidity of prices, their frequency of change, and their regularity of change. Here we have the Congress instructing the courts to disregard a form of evidence without which it will obviously be impossible to prove collusion.

Incidentally, it should be pointed out that this instruction to the courts with regard to types of evidence in conspiracy cases is inserted rather gratuitously in a report on a bill which is not concerned with the subject of conspiracy at all, but with an entirely different matter—price discrimination.

Mr. President, we all know that if there is one thing which the high-priced corporation lawyers now advise their clients, it is, "Don't leave anything in writing." Meetings are held to fix prices and the minutes reveal only the most innocuous happenings. Wherever possible, the business of the corporation is conducted in conferences, by telephone, at lunches, and on the golf course. These are facts of life which are known to every Member of this body. Yet, the antitrust agencies are now to be required to prove their cases solely on the basis of nonexistent documents. We are to deny the courts the right to use intelligence and reasoning, requiring them to consider only that which cannot be found.

Mr. President, if those who supported S. 1008 and now support S. 719 are still of the opinion that the basing-point system, as it operated in the cement industry, was an instrument of collusion, then it seems to me that they are now under an obligation to repudiate this gratuitous instruction to the courts. Otherwise, they will be in the awkward position of disapproving an illegal price-fixing system while at the same time depriving the courts of the only type of evidence by which its illegality could be demonstrated.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Maurer, one of its reading clerks, announced that the House had insisted upon its amendments to the bill (S. 11) to provide for the appointment of conservators to conserve the assets of persons of advanced age,

mental weakness, not amounting to unsoundness of mind, or physical incapacity, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. HARRIS, Mr. ABERNETHY, and Mr. O'HARA were appointed managers on the part of the House at the conference.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 3282) making appropriations for the Treasury and Post Office Departments and funds available for the Export-Import Bank of Washington for the fiscal year ending June 30, 1952, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. GARY, Mr. FERNANDEZ, Mr. PASSMAN, Mr. SIEMINSKI, Mr. CANNON, Mr. CANFIELD, Mr. WILSON of Indiana, Mr. JAMES, and Mr. WIGGLESWORTH were appointed managers on the part of the House at the conference.

ENROLLED BILL AND JOINT RESOLUTION SIGNED

The message further announced that the Speaker had affixed his signature to the following enrolled bill and joint resolution, and they were signed by the President pro tempore:

H. R. 4329. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of such District for the fiscal year ending June 30, 1952, and for other purposes; and

H. J. Res. 303. Joint resolution to provide housing relief in the Missouri-Kansas-Oklahoma flood-disaster emergency.

AMERICAN FOREIGN POLICY

Mr. MALONE. Mr. President, we are witnessing a second Yalta at Kaesong. The first Yalta gave Manchuria to the Russians, over the heads of the Nationalist Chinese Government, in 1945. This was followed by George C. Marshall's visit to China at the instigation of the State Department in 1946. Marshall was later to become Secretary of State and is at present Secretary of Defense.

On Marshall's visit to China in 1946 he proposed a coalition between Communist China forces and the Nationalist forces and forced Chiang Kai-shek to allow the Communist forces to march through the pass north of Peiping, and enter Manchuria unmolested. It was through him that the Chinese Communists were armed with abandoned Japanese equipment, and from the munitions plants which were then being manned by Russia. In addition, Marshall's visit stopped American ammunition from being shipped for American guns which had previously been furnished to the Nationalist Chinese.

This was a very effective follow-up to the action at Yalta. And now comes the final payoff at Kaesong.

This is the first time in the history of the United States of America, in 175 years of independence, that we have ever walked into an armed camp to discuss an armistice. Always before the general conditions of the armistice were agreed upon ahead of time and the meeting took place either on American-controlled or neutral territory.

We are dealing with the Russians, who denied ever having been in the war in the first place, and with the Chinese Communists who also officially denied entering into a war with us. It is a further step toward the recognition of Communist China by the United Nations which is in accord with the British policy, as they, along with India have already recognized Communist China. India of course is a part of the British Empire as it is in the sterling bloc area.

ARMISTICE WILL CONSOLIDATE RUSSIA'S GAINS

The armistice, if and when accomplished, will prevent any interference by the United States with Russia's consolidation of her gains in China during the next 10 to 18 months, and when they are ready they will move through Indochina, the Malayan States and Siam, first running a wedge between these nations by taking over the remainder of Burma. They have control of north Burma and have had ever since 1948.

Russia's aim is to gain control of the rice crops of Asia, of Asia's food supply. When she does that, she will then automatically control its people. The control of China, and then Asia, is definitely the first target of Russia. Russia's target is not Europe.

We are definitely continuing down the road on which Secretary of State Acheson started. From the beginning he has followed the line of supporting the empire nations of England, France, the Netherlands, and Belgium.

WE SUPPORT COLONIAL SLAVERY

Through following this line, we are supporting colonial slavery in the Far East, the Mediterranean area, the Middle East, and in Africa. We are making enemies among the people of those areas, people who naturally want to be our friends. Our position gives the people of those areas a choice only between colonial slavery and communism. Because of our support of the empire nations, capitalism means colonial slavery to those people. They cannot imagine anything worse than colonial slavery. Russia then can say that she is the people's champion, that she is for the control of Asia by Asiatics, control of the Middle East by their own people, and control of Africa by the African people. Russia can assume the role of freeing all of them from colonial slavery.

Mr. President, such an argument is a powerful one with those downtrodden people. Such an appeal cannot be overcome unless the United States repudiates colonial slavery in all its forms. One of those forms involves the control of upper Egypt, on the upper Nile, with the increased use of water from that great river during the low-water periods, thus endangering the economic life and the food supply of Egypt, one of the oldest civilizations of the world. Another form involves Iran with its oil supply; another, the Negroes of Africa; still another, the strategic minerals and materials of the Far East.

ALL WARS ARE TRADE WARS

It all adds up to the control of foreign trade.

Practically all wars are trade wars, aggravated by the empire-minded nations through the attempted perpetuation of a colonial slavery system. At stake is the economic domination of nations during the years ahead. It has never been anything else.

The only solution the United States could possibly have would be through dealing directly with the people of those areas and repudiating colonial slavery.

TROUBLE IN IRAN

The problem in Iran has been brewing for many years. The English oil companies pay approximately 17 cents a barrel royalty for Iranian oil, and through that trade have indirectly controlled the Iranian Government for many years. At the same time, American companies in Saudi Arabia, across the line, are paying from 50 to 60 cents a barrel and not controlling the government. The Iranian people do not like the discrimination.

Between 300,000 and 400,000 Iranian people have had their standard of living affected by the production of Iranian oil. The remainder of the approximately 17,000,000 population are still living on dried dates, goat's milk, and sagebrush; and they do not like it, especially when they see wealth flowing out of their country.

No mention has been made so far of any economic adjustment, but mention has been made that we are to support England, in the last analysis, in her position in Iran.

THE ATLANTIC PACT PITFALL

Mr. President, this situation started with the Vandenberg resolutions, asking for a commitment to the Atlantic Pact. Then arms were asked; then men. The Atlantic Pact says, in effect, that when these nations get into trouble we are in trouble.

Mr. President, on the floor of the Senate at that time the junior Senator from Nevada stated that if they got into trouble it would be trouble the roots of which would come from trying to perpetuate economic slavery in those areas. That is what is happening.

NUMBER OF TROOPS FOR EUROPE GROWING

General Marshall has recently quadrupled the estimate of the number of troops to be sent to Europe, from 6 divisions, totaling approximately 90,000 men, to 400,000 men. The only surprise that should be occasioned by this announcement is that anyone should be surprised. Then this subject was debated on the floor of the Senate the junior Senator from Nevada stated that it was only the beginning, that the number would increase progressively, just as it did in World War II.

CHURCHILL SAID THEY NEEDED ONLY MONEY

It will be remembered that in World War II Mr. Churchill, the great English statesman, said that they needed only money. Next he said they needed equipment. Both were forthcoming. They said they would handle the situation if we would furnish the equipment.

Then next, the English said they needed men, but only a reasonable number. Following that, came Churchill's

pronouncement, "We are destroying the seed of England. We must have more men from America." We in America ended by furnishing 73 percent of the fighting forces in Europe.

We are headed in the same way now.

BRITAIN "TAKES" US, GOING AND COMING

We note, incidentally, that the British are charging $95 a year for every man we have in uniform in England. This, they say, is a service charge—similar I suppose to the service charge in a night-club—to carry the overhead which they would have if they paid for it. However, all their bills are paid by us, so it is a little difficult to understand just where the overhead comes in.

Mr. President, there was published in the Washington Times-Herald of July 31, 1951, an article entitled "Britain Makes Millions on Yank Troops." The article was written by Charles E. Davis. It says in part:

Although our soldiers and airmen are housed in American-built barracks, we are paying the British a service charge of $95 a year for every man in uniform we have in England.

The British defend the charge as an assessment to cover the cost of water, heat, light, and mattresses furnished United States troops.

Inasmuch as we paid for everything in the beginning with the possible exception of the water and are paying for all the water installations, it is probably a charge for the water which comes out of the ground or out of the lakes.

Mr. President, this article is very enlightening. I ask unanimous consent to have it printed in the RECORD at this point in my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follcws:

BRITAIN MAKES MILLIONS ON YANK TROOPS

(By Charles E. Davis)

Great Britain is charging this country millions of dollars to base American troops in England for the defense of Europe, the Times-Herald learned last night.

Although our soldiers and airmen are housed in American-built barracks, we are paying the British a service charge of $95 a year for every man in uniform we have in England.

The British defend the charge as an assessment to cover the cost of water, heat, light and mattresses furnished United States troops.

COST SHOULD COME DOWN

However, several Republican Senators question whether a flat fee is justified. They contend that as more and more of our men arrive in England, the service furnished by the British won't run as high as $95 a man. Yet there is nothing in our agreement with Great Britain to allow for that factor.

The State Department is now working out similar agreements with other Atlantic pact nations, and presumably they will demand and receive at least as much as Britain.

Defense Secretary Marshall estimated last week that by the end of 1952, the United States will have 400,000 men in Western Europe. At $95 a man, the service charge alone for these troops will cost American taxpayers $38,000,000 a year. This, of course, does not include their pay, their food, and their other supplies.

RAISED FROM $60

This hitherto secret agreement with Britain was first negotiated by the State Department in 1948. At that time, we were committed to pay a charge of $60 a man.

When the British devalued their pound to $2.80, the State Department obligingly negotiated a new agreement that upped the payment to $95.

The agreement contains another device through which the British gain much-sought dollars.

Our military forces in England employ a considerable number of English civilians. The British Government acts as a sort of subemployer, furnishing and paying for all the labor required by our military.

DOLLARS FOR BRITAIN

Our military reimburses the British Government in pounds purchased from the United States Treasury, which buys them for dollars from London.

The disclosure of the "service charge" on our troops in England recalls the immense sum paid by the United States to Britain for carrying our troops overseas during World War II.

According to Admiral William W. Smith, former chairman of the Maritime Commission this country paid the British in excess of $100,000,000 for troop-carrying crossings made by the *Queen Elizabeth* and the *Queen Mary*. The liners were built at a cost of only $16,000,000 for the *Queen Mary*, and $20,000,000 for the *Queen Elizabeth*.

The Cunard-White Star Lines, owners of the two vessels, quickly paid off their indebtedness on them with what they reaped during the war as troop carriers.

The rate was $100 a soldier. The vessels each carried between 12,000 and 13,000 men.

Mr. MALONE. Mr. President, during World War II we paid for everything. We even paid a a specified sum for each of the coconut trees which the American field artillery mowed down in defense of British territory in the Pacific. The junior Senator from Nevada saw many of those coconut trees which were mowed down in defense of British possessions. Each tree was paid for by us.

The number of 400,000 American men for Europe will probably reach a total of 1,000,000 or more in due time, since there is very little likelihood of any considerable number of men being furnished by European nations. Hundreds of millions of dollars will be poured into Europe in salaries, subsistence, and general improvements.

RUSSIA GETTING WHAT SHE WANTS OUT OF EUROPE

It is a mystery to many close observers as to why Russia should want to take over Europe when Europe has been sending Russia everything she needs to consolidate her gains in Eastern Europe and to fight world war III with us. Since the end of World War II, with the United States furnishing the European nations the money and equipment to produce the necessary materials, the European nations have been selling such products to Russia.

In the opinion of the junior Senator from Nevada, Russia does not want to take over Europe, and there is little danger of a war starting there. Russia's goal is Asia; and she is utilizing the socialist governments of Europe while the United States is contributing to their support.

FOOLISH TO FURNISH EUROPE WITH GROUND TROOPS

Even if it were right in the scheme of things to fight world war III on the ground, it would be a foolish thing for the United States to furnish ground troops because Europe has 20 percent more men than can ever make a living there again unless someone pays the board bill and that can only mean Uncle Sam. The same is true of Asia and of the little nations in the Pacific.

It is air power, naval power, and submarine power that we can furnish, and can do so very well within our economy.

The policy of the Soviets at this time is a policy of playing soft, because there is nothing to be gained by them by playing hard. The worst that can happen for them in Asia in the event of further hostilities would be the loss of China itself, and China might fall apart since it is far from organized. A period of 2 or 3 years is urgently required by the Russians to digest the six or seven million square miles and the nearly 800,000,000 people which they have succeeded in attaching to themselves by means of a cold war. The figure includes Eastern Europe.

Our present military position is untenable. The military men we are keeping in Korea are scapegoats, victims of Acheson's policy. It is like our feeding meat to wolves. We have no real means of defense there. Lines of supply are bad.

And while this is going on the Russians are building a series of railroads connecting the Soviet Union with the populous areas of China.

THE "HEART LAND"

Sir Alfred MacKinder, an accepted military leader and writer, called this area, including the greater part of European Russia from the border of Poland to the Urals, and all of central Asia, including Soviet Asia, Mongolia, Manchuria, the "heart land."

The PRESIDING OFFICER. The time of the Senator from Nevada has expired.

Mr. LONG. Mr. President, I ask unanimous consent that the Senator from Nevada may conclude his remarks.

The PRESIDING OFFICER. How much time does the Senator from Louisiana yield to the Senator from Nevada?

Mr. LONG. As much time as is necessary for him to conclude his remarks.

The PRESIDING OFFICER. The Senator from Nevada may proceed.

Mr. MALONE. The country Russia is consolidating is called the "heart land." Sir Alfred MacKinder, as part of his theory, maintained that whoever held and developed this area would be in a position to come roaring down the periphery at any time.

Korea has a limited number of people, resources, and defenses. The "heart land" area will hold eleven-twelfths of all the world's people and at least that much of its energy and resources. Our United States forces will be in the interesting position of being in the center of a classic-enveloping movement at every turn. It will be squeezed like a nutcracker, overwhelmed by weight and power.

We have been inviting this situation since Yalta and Tehran.

Mr. President, holding our forces at the thirty-eighth parallel is insane. It makes no real difference, except for face-saving purposes.

The point we must not lose sight of is that the Russians will play soft until next election. They do not want Mr. Truman out of office.

OUR DEFEAT IN ASIA

We lost the chance of stopping Russia by our Far East policy. The control of China by the Soviets will follow the armistice. The loss of China could only have happened through a succession of events for which ignorance alone could not be the answer; it must be coupled with acts bordering on treason.

MacArthur was correct. We lost China first at Yalta, even before Mr. Marshall invited the Communists into the Government of China.

We lost an opportunity to win the war, and now we are going to be put in the paradoxical position of having to build up Communist China in addition to recognizing her through the United Nations.

The big question for the Chinese to decide is whether to be nice and peaceful. They will not be, any more so than the Russians were during World War II. After a year or two, the probing will begin again. After 5 years, we may be in the worst period of history, with no way out. The Russians are unlikely to cross Indochina for the next year and a half. Not only do they have to consolidate their gains in China, but they have to link Russia and China together.

OUR CHANCE TO STOP RUSSIA

The most the Russians can send into China is the equivalent of one shipload a day, and we can stop it at any time by bombing their railroad.

They have a railroad 3,500 miles long, from the factories in the Urals to Manchuria, but they have to establish supply lines with China, either by blasting a path through the ice in the north or by building railroads. At the present time they are building railroads. With a delay of 1½ years, they will start irritating again.

In the meantime, England will have kept possession of her Far East interests.

Mr. President, some time ago a very significant report was issued, although only little notice was taken of it. A review of the report appeared in the Annals of the American Academy of Political and Social Science, in May 1951. The report was issued by the Royal Institute of International Affairs, and is entitled "Defense in the Cold War: The Task for the Free World. A report by a Chatham House Study Group." The report was published in London and in New York in 1950.

I read from the review of the report:

This study of the current world situation is the collective product of a group which the London Observer refers to as "some of the best brains of the British Service Staff and the Foreign Office." Nevertheless it contains little that is new, and many of its conclusions can hardly be accepted by Americans.

Mr. President, I wish to point out one of the conclusions. In the last paragraph of the review we find the following:

To Americans an interesting reflection of European attitudes is contained in the discussion of whether Britain and France can afford to rearm "for the third time in half a century." Here the authors draw earnest attention to the fact that such an effort would call for little in the way of sacrifice of social services and living standards, since raw materials, food, and war supplies can be had in large quantities free from the United States.

Mr. President, please note this further quote:

Here the authors draw earnest attention to the fact that such an effort would call for little in the way of sacrifice of social services—

In other words, false teeth, eyeglasses, free hospitalization, free medical care; all of that would be continued—

and living standards, since "raw materials, food, and war supplies can be had in large quantities free from the United States." The argument clearly discloses that Europe expects America to place a floor under its present standard of living, as well as to provide the planes, guns, and nuclear manpower necessary to the defense of both Europe and European colonies.

Mr. President, that attitude is not new, although it is new to have it stated officially or semiofficially.

Mr. President, I ask unanimous consent to have this review of the report, this semiofficial document issued by "some of the best brains of the British service staffs and the Foreign Office," printed at this point in the RECORD.

The PRESIDING OFFICER (Mr. LONG in the chair). Is there objection?

There being no objection, the review was ordered to be printed in the RECORD, as follows:

FROM THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, MAY 1951

(Royal Institute of International Affairs. Defense in the Cold War: The Task for the Free World. A Report by a Chatham House Study Group. Pp. viii, 123. London and New York, 1950.)

This study of the current world situation is the collective product of a group which the London Observer refers to as "some of the best brains of the British Service Staffs and the Foreign Office." Nevertheless it contains little that is new, and many of its conclusions can hardly be accepted by Americans.

The authors examined the nature of the Soviet menace at length. They conclude that collective defense against Communist expansion in the world outside of Europe involves "the creation of situations of strength at the points of explosion," but that the carrying out of "this policy on a world-wide scale is likely to remain primarily the business of the United States and the British and Commonwealth Governments, not of the Atlantic community as such." Here and elsewhere in the report, it seems to be considered that the United States has become a partner in European imperial adventures in Asia. The report ignores entirely the fact that much of our troubles in Asia are directly traceable to the presence there of the European imperial raj, making the Russians appear to be the natural allies of these peoples in a great holy war for liberation.

In support of Britain's position in southeastern Asia, the report argues that this sector is "the Sterling area's greatest dollar earner" and therefore must be held in status quo at all costs. Nowhere does it occur to the authors that this point of view must be infuriating to Asiatics, who are interested in themselves on their own account, and that, in the end, Asia cannot be won with guns but only ideas, in which the dignity, independence, and well-being of Asiatics themselves must play an important part. The ominous significance of the true ferment brewing in Asia is touched on only casually in the single statement that "Peking may well become the leader of Asian nationalism against the white man."

The authors believe that the Kremlin is unlikely to launch an aggressive war in the manner of Hitler's attack on Poland but will continue to rely on the Soviet technique of cold war. What they propose for Europe is a force of armor and infantry capable of directly opposing Soviet infantry and armor at the line of the River Elbe. The report estimates the Soviet armies at 175 active divisions, one-third mechanized, with some 25,000 tanks and 19,000 first-line military aircraft. Against these numbers, the Atlantic Pact countries could bring to bear 12 scratch divisions at most, with less than a thousand fighting and bomber aircraft, almost wholly British and American. To prevent the immediate overrunning of Europe, the authors claim a minimum of 50 to 55 divisions are needed, one-third armored, and at least one-third quartered on the spot in Germany. Under the plan proposed, the Americans and British are to furnish the "hard core" of this European army around which other European states would be expected to rally.

The authors seek only "limited" German forces. They express the quite rational fear that a strong Germany may attempt to come to a separate understanding with the Soviet Union. They are doubtful of the A-bomb and of strategic bombing as agencies of military decision. They draw a dismal picture of the general weakness, apathy, and cynical calculation which at present consume the will of Europe.

To Americans an interesting reflection of European attitudes is contained in the discussion of whether Britain and France can afford to rearm "for the third time in half a century." Here the authors draw earnest attention to the fact that such an effort would call for little in the way of sacrifice of social services and living standards, since "raw materials, food and war supplies can be had in large quantities free from the United States." The argument clearly discloses that Europe expects America to place a floor under its present standard of living as well as to provide the planes, guns, and nuclear manpower necessary to the defense of both Europe and European colonies.

Mr. MALONE. Mr. President, the Democratic administration built the Russian power during the last 18 years—

First, in 1934, through the recognition of a shaky Communist Russian minority, without any safeguards whatsoever. Every veteran in America opposed it. Every veterans' organization vigorously opposed it because 12 years prior to that time—and I was in France, along with them—they had been in a war when the Russians gave up and went home to further the Communist program. Mr. President, the veterans knew what Russia was. It is difficult to conceive of an administration which would be ignorant of the facts.

Second, the trade with Russia, which we maintained all during the days of World War II, and assistance in the construction of hydroelectric and other projects during years prior to World War II.

UNITED STATES LEND-LEASE TO RUSSIA

Third, lend-lease assistance of every nature during World War II, including building up Communist Russia for fu-

ture power, and doing that deliberately. That is what was done, Mr. President.

Fourth, the Yalta agreement, transferring to Russia control of Manchuria, the breadbasket of China, without the knowledge or consent of China.

Fifth, forcing Chiang Kai-shek to let the Chinese Communists through the pass into Manchuria and to arm themselves with the matériel left there by the Japanese upon their surrender, and to permit Russia to obtain control of the munition factories there, which they subsequently operated.

Mr. President, it was my privilege to visit Gen. Fu Chi's headquarters, just north of Peiping, in November 1948. We were told that the Communists were then 8 miles out of Peiping. In any event, the general had a car meet our plane, which landed without lights. At that time I had the opportunity of visiting with him, in his armed camp. He said he was whipped when Marshall forced the abandonment of the pass to the Communist troops and allowed the Communists to go in and rearm. He said he was whipped when Marshall stopped American ammunition from coming to him for the American guns he already had. He said:

I have been able to keep the railroads open from the harbor to Peiping; but unless I get substantial assistance in the next 30 to 60 days, I will be a prisoner of war.

Of course, that is what happened, Mr. President.

Sixth, General Marshall's stopping the shipment of American ammunition to the Nationalists, for the American guns already furnished to the Nationalist Government.

Seventh, paving the way for a childish division of Korea, making the Korean war inevitable.

WE ARMED RUSSIA THROUGH THE MARSHALL PLAN

Eighth, furnishing almost unlimited funds and materials to the European nations through the Marshall plan and ECA. The 16 Marshall-plan countries furnished Russia and her satellite eastern European countries everything they needed in order to consolidate their gains and to fight world war III with us.

Mr. President, the junior Senator from Nevada has, on several occasions, enumerated the trade treaties between ECA nations and Russia and her satellites. The last time he entered them in the CONGRESSIONAL RECORD, there were 96 of the trade treaties.

The Marshall plan countries were shipping to Russia and her satellites every conceivable thing, locomotives, electrical equipment, ball bearings, tool steel, and tools with which to make other tools. And, Mr. President, with the material furnished to Communist China, through Hong Kong and Singapore by the English, together with that furnished by the 16 Marshall plan countries, without doubt more than half of the materials used to kill and maim the 150,000 American boys in Korea has been provided by the parents of those boys.

General Marshall admitted under oath that casualties came to 140,000. It is now more than 150,000 killed, maimed, or lost; and 60 percent of the materials used were furnished by the taxpayers of America, to be used in killing their own boys.

Ninth, the blockade of Chiang Kai-shek's troops in Formosa, to protect the Chinese mainland from attack by Nationalist troops, while the Communist troops were left free to fight in Korea.

Now, Mr. President, I quote briefly from the United States News, of a recent date, in which it said:

Trade embargo isn't effective anyway.

That is the opening statement in one of the paragraphs. It continues:

South Asian countries, such as Indonesia, India, Pakistan, and Burma, trade with China about as usual. Soviet-sphere shipping freely enters Chinese ports. Ineffective embargo is simply a source of friction between the United States and Britain and also several Asian countries.

It is well known that Chinese junks are leaving every night with troops, from Hong Kong and Canton. From Canton they go into the interior of China. Chinese junks are transporting materials for the Communist Chinese.

Tenth, the truce, or so-called armistice, now in session at Kaesong, points the way to a complete loss of China, and then Asia. Mr. President, history will be dated from the loss of China. Its loss will change the map of the earth, in the matter of power.

Mr. President, I desire to refer to a dispatch from the Hong Kong Standard, a Chinese-owned newspaper, as incorporated in an article written by A. T. Steele, in the New York Herald Tribune. It reads:

Why should Peiping worry?

Peiping is assured that its coastal areas and industrial bases will not be attacked by the United Nations forces. Peiping is assured that its "sanctuary" along the Yalu will be respected by the U. N. forces.

All this is history, now. I continue:

Peiping is assured that it need not worry about economic sanctions being enforced by the United Nations.

These are some of the reasons for the dismissal of one of the greatest generals the United States has ever known. He wanted to take care of the situation, but not permit a sanctuary, similar to a bird sanctuary for ducks, so that the supply of ducks would always be unlimited. This was a sanctuary for Communist Chinese, so that the supply of troops with which to kill American boys would always be unlimited. I continue:

Peiping is assured that it need not fear military sanctions by the United Nations. Peiping is assured that its forces will not be attacked by the U. N. ground forces if the former remain sufficiently far from the thirty-eighth parallel. Peiping is assured that it may have truce any time, as the Good Offices Committee is keeping the door wide open to peace.

Peiping is assured that China's seat in the United Nations may be had for the asking as soon as it ceases fighting in Korea. Peiping is assured that Taiwan (Formosa) will not be allowed to attack the mainland and will be prevented from doing so by the United States Seventh Fleet. Peiping is assured that its leaders will not be tried as war criminals even though Peiping has been branded an aggressor by the United Nations. Peiping is assured that it will not be called upon to pay war damages in Korea or to other member-states of the United Nations.

Mr. President, we all know who is going to pay the damages in Korea. United States taxpayers will be asked to rebuild it. Peiping will not be asked to rebuild Korea, nor will Britain, nor Russia. I continue:

With a single price to be paid in manpower, Peiping can accomplish its objective of keeping Korea in turmoil, of keeping the U. N. forces occupied indefinitely, and of keeping the democracies in perpetual suspense. And so why should Peiping talk about peace?

Mr. President, I quote again from a recent issue of the United States News:

War, ending, will not soon be resumed. Peace, however, is a long way off, not really near. Cease-fire, truce, will be short of secure peace.

The price of peace in Korea, as a minimum, will be U. N. membership for Communist China, an end to economic sanctions against China, maybe assurance that title to the island of Formosa eventually will go to Communist China.

Peace can be had only at a fairly high price. Peace at that price will be difficult for the United States to buy. It will be a price, however, that United States allies will very much want to pay. There is a strong urge for peace at any price.

We are building a European policy, not an American policy. The war in Korea, with the loss of more than 150,000 American boys, killed, maimed, and lost, has resulted in the complete loss of China, with a total loss of Asia to Russian domination in the foreseeable future.

Mr. President, I quote from a dispatch which appeared in the Las Vegas, Nev., Review-Journal of July 6, quoting an interview with the junior Senator from Nevada, as follows:

The forthcoming Kaesong cease-fire conference may well be another Yalta, in which the Russians will finesse control of China, and history of the fall of western civilization will be written from the date of the fall of China. We are not against an armistice in Korea, unless it is one whereby Russia gains all of its objectives.

Quoting further:

Senator MALONE, who had opposed sending foot soldiers into Korea from the start, said today that the present situation is most dangerous and that Secretary of State Acheson will do all in his power to see that, in the terms of the armistice, the door is left open for the seating of Communist China in the United Nations family.

The Senator declared that to seat China as a member of the United Nations will be the start of the collapse of Asia as a free area.

He said that the recognition of Communist China will be but a forerunner to the loss of Formosa and, when that happens, we will have lost all of Asia.

The Senator said also that "it is time we became more diligent in South America. We can, if we develop closely liaison with the countries of South America become self-sufficient here in the Western Hemisphere. We must work toward that goal.

"If China is recognized, it would be a rather simple diplomatic maneuver to get China seated as a member of the Security Council and then the Russians would have two cinch votes in the organization.

"France is on the verge of turning Communist," MALONE continued. "If that happens, and it well could if the Russians hook

onto one of the splinter parties of France, then the Communists would control the Security Council of the United Nations, and the organization would become a dead duck so far as the freedom-loving people are concerned."

Mr. MALONE. Mr. President, I ask unanimous consent to have included in the RECORD at this point a dispatch from the Reno Evening Gazette of June 19, 1951.

There being no objection, the dispatch was ordered to be printed in the RECORD, as follows:

DEMOCRATS STALL INVESTIGATIONS, MALONE CHARGES

Senator GEORGE W. MALONE (Republican, of Nevada), said today that the Korean war "with all its senseless killing of American boys can be laid at the door of traitors in Washington who will not be fully exposed until the Republicans gain control of the committees and the investigating machinery of the Congress."

The Nevada Senator, in a statement issued through his Washington office, said the congressional investigations "are invariably choked off when administration toes are about to be stepped upon."

"The real issue," the Senator said, "is that the administration is following the British line in allowing Russia to finesse control of China which will lead to the control of all of Asia while Russia is incapable of sustained action in that area—and we are supporting colonial slavery in the Far East, the Mediterranean area, Africa, and the Middle East, thereby making enemies where they want to be our friends."

"The people are wondering how we got into the Korean mess. I can throw a little light on the subject. It will be recalled that I succeeded in forcing Michael Lee and Remington out of the Department of Commerce as security risks and that Assistant Secretary of Commerce, Blaisdell, and Assistant to the Secretary, Gladieux, who had sponsored Lee and Remington, resigned immediately after my attack. I was showing the pattern of subversive influence, how we were being sold out by traitors placed in key positions in Washington.

"I am bringing this up now for it has been evident that our present problem with the Chinese Communists, with the attendant deaths and maiming of our fine American boys in a pointless police action, stems directly from this subversive element in our Government. Michael Lee, a Russian whose real name was Ephraim Lieberman and who had been denied American citizenship because he did not believe in the American form of government, maneuvered himself, or rather was placed by the powerful Communists in Washington, in the key position where he could say 'Yes' or 'No' the shipments to the Far East. He was thus able to hold up shipments of vitally needed gasoline to the Republic of China for seven fateful months while the Reds were advancing. When the full story is exposed, the American people will see that our troubles were brought on by traitors in Washington.

"Republicans in the Senate, not having control of any of the committees, have been powerless to carry investigations through to the finish when administration toes were about to be stepped upon. A case in point is the soft-pedaling of the Senate Crime Committee when administration fairhaired boy, Ambassador O'Dwyer was about to be connected with New York racketeers and gangsters, or when the investigation turned to Kansas City and Pendergastism. When the Republicans come into power after the next general election, we can then get at the full and ghastly truth.

"I'm talking about the Truman administration's connections with weak-kneed pinks and downright traitors as well as with big time, big-paying racketeers of the infamous Murder, Inc., breed."

Mr. MALONE. Mr. President, I ask unanimous consent to have printed in the RECORD at this point in my remarks, a dispatch from the Las Vegas Review-Journal of July 22, 1951.

There being no objection, the dispatch was ordered to be printed in the RECORD, as follows:

SENATOR MALONE HITS DEMOCRATIC PSYCHOLOGY

Charging that the Korean peace talks "scared the life out of the administration," Senator GEORGE W. MALONE Saturday in Washington declared that the Korean war had the ulterior value for its effect in promoting crisis psychology, the stock in trade of the New Dealers.

He took another pot shot at the administration, when he said that the "Truman administration is attempting to discredit and abandon the American economic system," and charged "the New Dealers would not know what to do with peace and normal times, as they have existed entirely on one emergency after another." He said, "When it looked as though the fighting in Korea might stop, the Truman officials busied themselves justifying spending as usual. Long ago, they turned their backs on the American economic system, in their whirling dervish maneuvers to attract all those who want something for nothing.

"The something-for-nothing philosophy has not panned out. It was politically successful but economically suicidal.

"Despite the pump priming, the wild spending, the flow of relief checks, the made-work projects, unemployment continued to increase. At the time World War II broke out in 1941 there was more unemployment in this country than ever before in history. The unemployment problem was finally solved—by World War II.

"The control fanatics continued to demand more and more rigid controls over industry to curb prices, which really need nothing more than a touch of free American competition to take care of themselves.

"The great strength of our country lies in its productivity. We had an untrammeled production machine that being free to grow had grown rich in untapped resources.

"This we would not have had if we had been hamstringing ourselves with Government controls. The United States will not remain the most productive Nation on earth if the Government tries to run the mines, the factories, the farms, the stores, and the railroads."

Mr. MALONE. Mr. President, I have an editorial from the Times, of Erie, Pa., dated July 28, 1951. It says:

Senator MALONE, Republican, of Nevada, has properly spotlighted an evil which must be of concern to all Americans.

He declared the prospects of ending the Korean war have made New and Fair Dealers badly frightened men by removing their crisis psychology.

The Fair Dealers, he said, would not know what to do with peace and normal times because they have existed entirely on "one emergency after another."

"When it looked as though the fighting in Korea might stop, the Truman officials busied themselves justifying spending as usual. Long ago they turned their backs on the American economic system in their whirling dervish maneuvers to attract all those who want something for nothing."

MALONE said the administration has been able to accomplish "much of its socialistic aims" by four methods: Taxation designed to give the Government profits but make workers or investors stand the losses; a foreign free-trade policy which curtails domestic production and will "eventually pauperize American workers and investors, Government regulations designed to eliminate the investment of venture capital; and reckless spending designed to complete the collapse of the economic structure.

"Whether by traitorous design carried out by half-baked 'experts' or by stupidity, our American economic system is threatened," MALONE said.

End of quotation.

NEW DEAL RAISES TAXES TO TAKE AWAY WAGES

Mr. President, it has been very interesting in the past 2 or 3 years to see a system developed that we must have more taxes in order to stop inflation. The system provides that we raise the wages of the workers, the stenographers, machinists, barbers, and all the rest, and then raise the taxes and take the money away from them. It's a wonderful system. Apparently they think our workers cannot be trusted with money. When a man receives a 50-cent raise in wages, Uncle Sam must take at least 60 cents away from him. It is a great system.

Within 90 days of the time the last so-called crisis ends, if that ever comes, the economy of this country will tremble, because the sweatshop-labor products of the world will pour into this country. We have come to the point where all the money for development of war industries and all other kind of industries must come from taxes, because our people will not invest their money as venture capital when they know that the end of the emergency means industry is destroyed.

Mr. President, I ask unanimous consent to have included at this point in the RECORD, the entire press release quoted in the above editorial.

There being no objection, the press release was ordered to be printed in the RECORD, as follows:

United States Senator GEORGE W. MALONE (R., Nev.) said today that the prospect of bringing to an end the shooting in Korea left the New Dealers badly frightened men. The Korean war had the ulterior value for its effect in promoting crisis psychology, the stock in trade of the New Dealers, the Nevada Senator said.

In a statement issued by his Washington office, Senator MALONE charged the Truman Administration with attempts to discredit and abandon the American economic system. He said that the New Dealers would not know what to do with peace and normal times, as they have existed entirely on one emergency after another.

Continuing, Senator MALONE said: "When it looked as though the fighting in Korea might stop, the Truman officials busied themselves justifying spending as usual. Long ago they turned their backs on the American economic system in their whirling dervish maneuvers to attract all those who want something for nothing.

The something-for-nothing philosophy has not panned out. It was politically successful, but economically suicidal.

Despite the pump priming, the wild spending, the flow of relief checks, the made-work projects, unemployment continued to increase. At the time World War II broke out in 1941 there was more unemployment in this country than ever before in history. The unemployment problem was finally solved—by World War II.

"One emergency after another. And things constantly getting worse.

"The Socialists have wanted from the start to discredit the American economic system. At the same time, they have tried almost every trick in Adolph Hitler's bag in trying to regiment the American people. Some of this regimentation has slipped through, with the result that the hot breath of the bureaucrats is felt on the necks of Congress, demanding more and more power to tax and spend. These people who would regiment our lives and change our economic system are not willing for free enterprise to function.

"The control fanatics continue to demand more and more rigid controls over industry to curb prices, which really need nothing more than a touch of free American competition to take care of themselves.

"The great strength of our country lies in its productivity. We had an untrammeled production machine that being free to grow had grown rich in untapped resources.

"This we would not have had if we had been hamstringing ourselves with Government controls. The United States will not remain the most productive nation on earth if the Government tries to run the mines, the factories, the farms, the stores, and the railroads.

"What has happened under the managed economy, instituted under the New Deal, in addition to ever-increasing controls over the personal and business life of everyone, is indicated by the increases in the national debt, the decrease in the value of the dollar, shortages in strategic materials, and the gargantuan expansion of Government employment.

"The shortages of production of strategic and critical minerals and materials have been created through the so-called managed economy and then alleviated through a program of relief, paid for with taxpayers' money, such expenditure being justified by the current emergency. All of this has required more and more Government bureaus, wth imore and more experts and economists on the Federal payroll.

"Was there a plot to make the people dependent upon a gigantic central government, subsidize all classes, raise wages and siphon all the raise off in in increased taxes, buy off opposition, harass businessmen, curtail domestic production, encourage slave-labor imports, make private investment and all production unprofitable, and discourage the investment of venture capital?

"The administration has been able to accomplish much of its socialistic aims by four methods: (a) Taxation so designed that if an American worker or investor has a profit on invested venture capital the profit belongs to 'Uncle' and if he has a loss the loss belongs to him; (b) A foreign "free trade" policy so designed as to curtail domestic production and eventually pauperize American workers and investors; (c) Government regulations so designed as to eliminate the investment of venture capital, despite the fact that our progress and our advancement have come from venture capital; and (d) Reckless spending on the part of the Government so designed as to complete the collapse of our economic structure.

"Whether by traitorous design carried out by half-baked "experts" or by stupidity, our American economic system is definitely threatened.

"It is time we got back to fundamental Americanism. Our American economic system is as much a part of America as is our countryside, our traditions and our Republic, and those who attack this economic system attack America. Our competitive economic system, with available venture capital, is the hope of new generations to come. When the American economic system is gone, the death of the American form of government cannot be far behind. That this is known by the socialistic plotters against things American is clearly indicated by the pattern being followed.

"We desperately need an American domestic and foreign policy based upon our own ultimate security and well-being, and to stop chasing the will-o'-the-wisp of permanent foreign alliances and a 'one economic world,' with this Nation footing the bill in American lives and dollars."

Mr. MALONE. Mr. President, there are several things which contribute to the ugly situation in which the American economic system finds itself.

The first is "free trade," which removes the floor under wages and investments.

Today we are threatening to take away trade privileges of Czechoslovakia because there is an American prisoner held there. Now everyone knows that the prisoner is not guilty of anything except honest reporting. But instead of proper methods to right the wrong, we are now using the trade concessions to a nation which should not have been granted in the first place to punish another nation. Mr. President, it is a serious thing when we traffic in the jobs and the investments of our people and use them for purposes entirely removed from those jobs and investments.

A little backbone would take care of the situation. The Government has had no backbone for the last 19 years. As a result, we have witnessed criminal punishment meted out to our American citizens. Czechoslovakia is the same nation which shot down two of our planes at one time. It is about as safe for a United States citizen to be in Czechoslovakia as it is for a citizen of the smallest or weakest nation on earth. We do not protect our citizens. It is disgraceful.

Second, empire preferential rates. It will be recalled that at the last conference at Torquay, England, when we wanted other nations to enter into an agreement to lower tariffs, they said, "No, not now; we will get the advantage of the most-favored nation clause; whatever concession you give any nation, we get the same advantage." That is what the British Empire and the sterling-bloc members said to us.

Third, the bilateral agreements made by Great Britain and other nations, such as the agreement made with Argentina for beef and other materials.

Fourth, manipulation of the exchange values for trade advantages. At one time Britain had 28 exchange values. The junior Senator from Nevada placed a list of them in the RECORD in 1949, when he discussed the ECA and the Marshall plan.

Fifth, foreign nations defeat the effect of any American foreign policy in every way they know how. We really have no American foreign policy. On June 18, I believe it was, the junior Senator from Nevada addressed the Senate on a proposed American foreign policy. One is desperately needed. We have had none for 19 years other than the European policy. We have followed the policy of Great Britain, and protected her interests throughout the world.

If we did have an American foreign policy, we should include a number of provisions:

(a) There should be a United States of Europe, or a customs union, and the formation of such a union should be made a condition of any assistance of any kind by us. With a United States of Europe, Europe could reach its ultimate of economic and military strength. It never can do so the way things are now, with each nation with a king or a dictator or a president, kept up in the style to which many would like to become accustomed.

WE PAY THE KING'S SALARY

The other day I noticed in the newspapers a statement that Leopold of Belgium had been retired to the back pasture, and that his son had been placed on the throne. I noted that Leopold was granted a life annuity of $120,000 a year, in our money—and we are paying it, Mr. President. It has never been of any concern to the junior Senator from Nevada if the King of England, for example, was paid $1,500,000 a year, or if the retired King of Belgium was paid $120,000 a year, until such king got on our payroll.

(b) It has been suggested that we guarantee the integrity of private investments in foreign countries. The governments of those countries should guarantee the integrity of private investments in their respective countries.

This Nation should not be called upon to guarantee its own private citizens' investments in other nations.

That would be idiocy. That would be like a bank making a loan and guaranteeing it. Only a State Department such as has been developed here could seriously suggest such a thing. A condition of any further help to a foreign country should be that country's guaranty of the integrity of private investments made in that country.

(c) Equal access to the trade of the areas we are committed to defend. This in itself would preclude colonial-empire slavery. It would mean that any independent nation on earth could fix tariffs or import fees or anything necessary to preserve its own standard of living and its own economy at the same time, no third nation could go into areas we are committed to defend and force tariffs and import fees favorable to that third nation and prohibitive to any nations.

(d) Develop our air and sea power, including submarine fleets, to control the air over any area the integrity of which is important to us, and blockade any nation which might seek to move into those areas—as we could have done in Korea and southern Manchuria and China.

Mr. President, we have from 1945 to 1951, wasted 6 or 7 years and spent $100,000,000,000, and there is practically nothing to show for it. Sixty billion dollars was spent in the first 4 years following the war, and we could not blow a nation's hat off that had any ordinary force at all. Where did the money go? Nobody will know until the control of the committees of the Congress changes hands after the next general election.

(e) Take the Monroe Doctrine that worked so well and extend it to cover those areas important to our ultimate security and welfare, and say, just as Monroe said in 1823, more than 127 years ago, that any nation that seeks to move into these areas will be guilty of an overt

act against the United States, and be prepared to back up our position.

(f) No foot soldier, as such, would be sent outside this country. It is utter idiocy to send foot soldiers into areas that have far more people than can support themselves. People of foreign countries are laughing at us now, Mr. President, because 400,000 of our troops are on the way to Europe, where there is no war, and no immediate likelihood of a war, while we are losing Asia, the key to the whole world—losing it purposely, in the opinion of the junior Senator from Nevada.

Let these foreign nations furnish their own foot soldiers. Let us help arm those nations. Let us do the things we know how to do, such as prepare an air corps. In 1948 we asked, here on the Senate floor, for a sufficient Air Corps. The President said 55 air groups would be sufficient. The Congress, and the junior Senator from Nevada helped to do it, authorized 70 air groups. The President built 45 air groups, or something in that neighborhood, even less than he had recommended, but he continued to throw money around throughout the world, to no purpose.

Why do I say to no purpose? Because there are more Communists in France and Italy today than there were when we voted the first Marshall plan, and the people in those countries are trained, like the young robins in the nest, to wait until we bring food and money to them.

Mr. President, a very significant item appeared in this morning's newspapers. It was a Reuter dispatch emanating from London July 31, yesterday, headed:

British Foreign Office Chief Coming to the United States.

Mr. President, his coming ought to surprise no one! The junior Senator from Nevada has predicted it for 60 days. He has so stated at every opportunity. I believe he mentioned on the Senate floor that by September we would have a distinguished visitor from England again, and he would be coming to get money and to save his Government.

Mr. President, England is in worse financial shape today than she was the day we passed the Marshall-plan legislation in 1948. Everyone knows that. What we have done is to preserve a Socialist, spendthrift Government in Europe at our expense, paying the board bill, paying for socialized medicine, paying for false teeth, paying for eyeglasses, paying for increased pensions, and to preserve a form of government in England and in other nations in Europe such as we say we do not want here. Mr. President, we are headed toward such a form of government. It is a question whether it will fasten itself on us so firmly that it can never be torn loose.

Mr. President, if the Republicans miss out in the next election, I think we shall have reached the point where socialism cannot be torn loose. We must stop the continuity of a crowd which has lost all responsibility of government. Mr. President, they are not immoral. They simply do not know that the things they do are wrong. They tried for many years to get money out of the United States Treasury and out of the RFC, and suddenly they found themselves in possession of both. They never realized that they had any responsibility. They started taking it home.

The dispatch says:

Foreign Secretary Morrison will visit Washington to confer with State Secretary Acheson and other United States officials in September, it was learned here today.

Reuters is a little behind. Everyone except Reuters, who had any knowledge of the situation, knew it 2 months ago.

His visit will start after the Japanese peace treaty conference in San Francisco, expected to finish September 8.

THE JAPANESE TREATY

Mr. President, we talk about the Japanese treaty. I merely wish to mention it. This is what is going to happen. The Japanese treaty has been the subject of a great fanfare all over the United States. Mr. Dulles has told us what a great thing it is. The Japanese treaty will be in such shape that when it is signed by all the nations it will be left to Japan to decide which government in China she will recognize.

That is a little noticed thing. Perhaps it was not even considered important by a great many people, but to me it is one of the important things. Which government in China will the Japanese recognize? Which can she recognize? It is well known that Japan cannot live unless someone supports her, as we have been doing ever since the war closed. We have been buying her goods.

During the debate on the great reciprocal-trade program, which was supposed to make everyone in the United States rich, dividing our markets with foreign nations, on one corner of this desk I had an American-made sewing machine, and on another a Japanese-made sewing machine. One sold at wholesale for $22, and the other for $71. The difference mechanically was very slight. The important difference was that the Japanese mechanics who made the $22 machine, received from 7 to 12 cents an hour. In our country, the boys who live as we do, who can buy an automobile and who live in a hotel when they visit a town, and live in houses with curtains on the windows and nice floors, instead of dirt floors, receive from $1.80 to $1.90 an hour. I suppose a great many Senators have been to Japan. I have been there. I did not see many good dwellings for working people. Our boys receive $1.80 or $1.90 an hour. That makes the difference.

Mr. President, I say that Japan cannot live unless we support her. We are the only nation on earth which would open our markets for her goods, goods of which, with few exceptions, we already have too much, unless we are to put our own people on the street. We cannot do that. It is crazy. It is utter idiocy to consider it.

Japan cannot live without buying raw materials from China and selling her finished goods to China. So when we stop the war with an armistice near the thirty-eighth parallel, and guarantee that Russia will not be interfered with in consolidation of her gains in Communist China, the Communists will be in control of China. Whom are the Japanese going to recognize? They will recognize the Chinese Communists, because they must eat. That is one more link in the chain. England knows that, we know it, and the State Department knows it.

England objected violently to the treaty which would have allowed Japan to trade wherever she wanted to trade, because England knows that two nations which will fight and work are Japan and Germany. They will undersell and outwork other nations. So England objected violently. Suddenly everything was hushed up, because what I have just explained, the recognition of Communist China by Japan, is in the cards. Japan is going to recognize Communist China.

No doubt Mr. Morrison will get his money and save the Socialist-Communist government of Britain. Apparently, it would be an unheard-of thing to put the proposition on the basis that we would not support her colonial system and would give her no money under any circumstances unless there were a United States of Europe, which even Mr. Eisenhower has now come around to advocate, 3 years late. Oh, no; that cannot be done, Mr. President, because Mr. Churchill might come back into power, and that would be terrible from the standpoint of our own Socialist administration.

So I say that we have a second Yalta at Kaesong. There is no question about it. The procedure is clear. It will lead to the recognition of Communist China in the United Nations and the ultimate control of the Security Council by Russia. It is a sad thing to contemplate.

While the eyes of America are turned toward Europe, where there is practically no chance of a war in the foreseeable future, because the European countries are cooperating with Russia, two of the principal nations—at least the principal nation, England—has recognized Communist China. She is working with Russia. The first trade treaty which the junior Senator from Nevada placed in the RECORD on March 4, 1948, to start the debate was a trade treaty between England and Russia. What was in that trade treaty? Right straight down the line, everything Russia needed for her transportation, for preparation for war, and everything else to consolidate her gains. She never could have produced the goods necessary to consolidate her gains in Eastern Europe or in China—and she could not do it now, if we had the guts to shut down on the goods going in there financed by our own taxpayers.

The Senate of the United States does not have the guts to shut down. We talked about President Roosevelt recognizing Communist China. Every sane man in the world knew what would happen. The American Legion, the Veterans of Foreign Wars, and all the other veterans' organizations violently objected. Were they listened to? No. They were brushed aside. But, Mr. President, Mr. Roosevelt could not have recognized that Communist government if the Senate of the United States had not gone along.

Now, Mr. Truman is carrying the flag. He has a pretty good-sized pair of shoes to fill. He is carrying out the same program, although perhaps not with the same snap and the jaunty air which used to be in evidence.

But, Mr. President, if the Senate of the United States had the guts, it could stop this thing in its tracks. Mr. Truman could not do these things; he could not have free trade; he could not have his foot soldiers in Korea, if he did not have money to finance it and to send ground troops over there—one of the most foolhardy things that has ever happened in the history of the world.

The Socialist program has never let up. Sometimes it was necessary to wait a while, but every step was inevitably ahead. The goal was always there, with the President of the United States pushing forward, and the Senate approving the move regardless of how wrong it might be for the American people.

COMMENTS ON PRESIDENT TRUMAN'S RECENT SPEECH AT DETROIT, MICH.

Mr. McCARTHY. Mr. President, I have several insertions I should like to make in the body of the RECORD, in order to keep the RECORD clear on a matter which occurred the other day. President Truman, speaking at Detroit, Mich., condemned the people of Wisconsin for having refused to sign a petition put out by the Capital Times, of Madison, Wis. After the President made his comment I mentioned the fact that he had been duped by the Communist city editor of the Capital Times.

I pointed out that the city editor, Mr. Cedric Parker, had been named as a Communist by his own editor.

According to an article in today's Washington Star, Mr. Parker denies that he was a Communist.

He is quoted as saying:

Senator MCCARTHY says I refused to sign the non-Communist affidavit when I was president of the Madison Newspaper Guild. That is another lie and Senator MCCARTHY knows it.

In that connection I ask unanimous consent to insert in the body of the RECORD at this point a letter from the National Labor Relations Board, dated November 10, 1949, in which the Board states that Mr. Parker failed to file the usual non-Communist affidavit.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., November 10, 1949.
Senator JOSEPH R. MCCARTHY,
Washington, D. C.

DEAR SENATOR MCCARTHY. Since receipt of your letter dated November 8, 1949, I have caused the files in this office to be searched for the American Newspaper Guild, CIO. This search included the international union as well as each local including those located in Madison and Milwaukee. This office has no record of an "Affidavit of non-Communist Union Officer" having been filed by Mr. Cedric Milford Parker.

In accordance with the request contained in your letter there is enclosed blank forms "Affidavit of Non-Communist Union Officer."

Very truly yours,
CLAUDE B. CALKIN,
Affidavit Compliance Officer.

Mr. McCARTHY. In connection with the statement of the city editor of the Madison newspaper—if we can call it a newspaper—I ask unanimous consent to have printed in the RECORD at this point an editorial which appeared in the Capital Times on Friday, March 14, 1941, in which the editor of the paper named Mr. Cedric Parker as "the Communist leader in Madison." He goes on to say:

Let's get down to cases. Mr. Parker is a Communist and I defy him to publicly deny that statement.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

A REPLY TO MR. JOHNSON

Mr. CLIFFORD H. JOHNSON,
Secretary, Steelworkers Organizing Committee, Lodge No. 1404, Madison, Wis.

DEAR MR. JOHNSON: I am in receipt of your letter in which you enclose a copy of a resolution adopted by local No. 1404 of the Steelworkers Organizing Committee, more conveniently known as the Gisholt Union. The resolution which you enclose contains this paragraph:

"That local No. 1404 of the Steelworkers Organizing Committee hereby instructs its delegates in the Madison CIO Council to work and vote against any further acceptance of dictation from Mr. Evjue by the council."

Please be advised that neither the Capital Times nor Mr. Evjue is attempting to dictate to the Madison CIO Council or any other organization. In line with the policy which has been followed for nearly a quarter of a century, the Capital Times is simply presenting facts and information to which the public is entitled.

The Capital Times believes that the public is entitled to facts about the Madison CIO Council when the council engages in projects that are against the public weilfare. The Capital Times will not be swerved from that purpose by a familiar game—your attempt to raise the cry of dictator in order to divert attention from your own acts.

I am wondering, Mr. Johnson, why you are so fearful of dictation at the hands of the editor of the Capital Times and why you accept so easily dictation at the hands of Mr. Cedric Parker, the Communist leader in Madison. If anyone has dictated (and successfully) to the Madison CIO council, that person is Mr. Parker. I venture the statement that Mr. Parker had a hand in the resolution which has just been adopted by your Gisholt union.

Let's get down to cases. Mr. Parker is a Communist and I defy him to publicly deny that statement. The Madison CIO council was conceived by Mr. Parker. It was brought into being through the activities of Mr. Parker. For months Mr. Parker was the dominating spirit in the CIO council. His domination has become a bit more tenuous in recent weeks because members of unions affiliated with the Madison CIO council have been showing increasing determination to repel the tinge of communism which Mr. Parker's activities are giving to the affiliated bodies of the Madison CIO.

This rebellion against Mr. Parker's activities resulted in the adoption of a resolution at the last meeting pledging the opposition of the members of the Madison CIO council to communism, fascism, and nazism.

While you now proffer this resolution as evidence to substantiate your claim that the CIO council is free of communism, isn't it true, Mr. Johnson, that you and Mr. Parker used every parliamentary trick possible to bring about the defeat of this resolution against communism, nazism, and fascism?

And isn't it also true that the council refused to adopt a resolution similar to the one that you have now succeeded in jamming through the Gisholt meeting?

Isn't it true that this resolution was brought before your union through Mr. Parker?

Isn't it true to say that, defeated in the Madison CIO council, you and Mr. Parker succeeded in getting this resolution adopted by the Gisholt union?

There are some questions that I would like to direct to you, Mr. Johnson:

How many members of the union were present when this resolution was adopted? Who wrote the resolution? Who offered the resolution?

May I say that I do not believe that the resolution represents the feelings of a majority of the members of the Gisholt union, I do not believe that the majority in the Gisholt union relishes the label of communism which is now being placed on the Gisholt union and the Madison CIO council by the activities of you and Mr. Parker.

Again I assure you that I have no desire to dictate to the Gisholt union or the Madison CIO council. I am fighting the Communists. I am not seeking to suppress the Communists. I am simply seeking to expose Communists who hide behind false fronts and seek to use such organizations as the Madison CIO council and the Gisholt union for their own purposes.

I repeat what I have frequently said. The influence of the Communists should be fought in the American trade-unions. The primary purpose of the trade-union is to promote good relations between the employer and the employee. That is the last thing the Communist wants. The Communist wants strikes, discontent and bitterness between the employer and the employee.

The public, in the last analysis, is the final arbiter. And the public is entitled to know the facts when Communist influence seeks to obtain control of the trade-unions.

You maintain that the unions affiliated with the CIO council are democratically conducted. Inasmuch as you have adopted a resolution criticizing me, I think your professed devotion to the principles of democracy would impel you to read this letter at a meeting of the Gisholt union.

Very truly yours,
WILLIAM T. EVJUE,
Editor.

Mr. McCARTHY. The next time President Truman decides to slander the people of my State I hope that he will not use a Communist sheet edited by a Communist city editor in order to do so.

PRICING PRACTICES

The Senate resumed the consideration of the bill (S. 719) to establish beyond doubt that, under the Robinson-Patman Act, it is a complete defense to a charge of price discrimination for the seller to show that its price differential has been made in good faith to meet the equally low price of a competitor.

Mr. HUMPHREY. Mr. President, it had been the intention of the Senator from Minnesota to participate in the debate this afternoon on the pending bill, S. 719. Due to the lateness of the hour I shall forego any opportunity which I might have had to make an address, which I had prepared, on what I considered to be a very vital measure.

I wish to take a brief moment, however, to commend the present occupant of the chair [Mr. LONG], who a few hours ago gave what I consider to be one of the finest addresses and one of the most provocative and analytical dissertations I have ever heard of the whole complex

subject of discriminatory pricing, basing-point practices, freight absorption, and all the monopolistic practices which are referred to an covered by the Clayton Antitrust Act and the Robinson-Patman Act.

I would commend to my colleagues who were not present to listen to the debate this afternoon—and I cite that fact as a tragedy, because we have before us a measure which affects the life of our free-enterprise system—a reading of the RECORD, particularly the portion of it which was contributed by the Senator from Louisiana [Mr. LONG]. I believe it would be very beneficial to do so.

Also I should like to say to the present Presiding Officer that in my humble opinion, as I watched appropriations for the enforcement of antitrust laws being reduced, as I watched the Federal Trade Commission losing its attorneys and its enforcement officers, and as I watched the continuing efforts on the part of big business literally to ruin and emasculate the antitrust laws, that I believe the time is at hand to run up the flag of warning and alarm to free and competitive business enterprises in America.

Mr. President, I will say that if S. 719 is passed by the Senate as a similar bill was passed by the House, and if by some strange unfortunate set of circumstances it should be signed by the President, we would have started a process of returning to those unfortunate days when small business was engaged in a losing fight.

The record is clear. I have before me the report of the Committee on the Judiciary and the minority views on the pending bill. I have had the privilege of participating a little more than a year ago in the debate on the basing-point bill, which was debated on the floor of the Senate. It was Senate bill 1008. I joined the Senator from Louisiana [Mr. LONG], the Senator from Tennessee [Mr. KEFAUVER], the Senator from Illinois [Mr. DOUGLAS], the Senator from Alabama [Mr. HILL], and other Senators in that debate. I believe we were on the right side. As the Senator from Louisiana pointed out today, when the Supreme Court of the United States protected the antitrust laws, big business came to Congress to get the law changed. When the Supreme Court of the United States renders a decision by a very narrow margin of 5 to 3—and it might well have been 5 to 4, because Mr. Justice Minton had sat on the circuit court and therefore did not participate in the Supreme Court decision—big business moves forward charging into Congress, demanding that a law be passed which will place into statutory form the decision of the Supreme Court in a specific case, involving one city and a particular set of circumstances, and to make that law binding on every business enterprise in every city and every State all over the United States.

Mr. MALONE. Mr. President, will the Senator yield?

Mr. HUMPHREY. The Senator from Minnesota will not yield at this time, unless it is for the purpose of making an insertion in the RECORD.

Mr. MALONE. Will the Senator yield for a question?

Mr. HUMPHREY. No. The Senator from Minnesota wishes to conclude his remarks. After he has concluded he will be happy to yield. The Senator from Minnesota would like in a few moments to move a recess.

Mr. MALONE. The junior Senator from Nevada would like to see the Senate recess, but he would also like to ask a question of the Senator from Minnesota.

Mr. HUMPHREY. The Senator from Minnesota will continue until he has finished his remarks. We see what has been transpiring in the past few years, with the Federal Trade Commission being weakened, with the Antitrust Division being weaker today in personnel than it has been for many years, and with one $9,000 a-year lawyer in the Antitrust Division fighting a battery of big company lawyers.

Mr. President, I sat on a subcommittee which was considering a postal rate bill and a postal pay bill. I saw 1 attorney from the Post Office Department oppose 45 attorneys from the American Association of Railroads. The public was protected by one $9,000-a-year man, and corporate business was protected by 45 representatives of the legal profession. That may be equality in the minds of some people; but to my mind it is not equality.

I take this opportunity of commending those who have led this fight for the public interest. I wish to say again that not to permit hearings on a bill which affects the economic stability of thousands of small-business firms is an unorthodox procedure.

The pending bill affects the lives, the economic solvency, and the economic future of every drug store, grocery store, filling station, and every small wholesaler, and every small firm in America. Not one farmers' organization was heard. Not one organization representing the independent small-business men was heard. Not one, Mr. President.

The only hearing that was held was the one before the Senate Select Committee on Small Business. That committee had absolutely no jurisdiction whatsoever. The bill would not have received even the hearing before the Select Committee on Small Business if it had not been for the present Presiding Officer [Mr. LONG], and some of his colleagues in the Senate.

I hope that when the RECORD is read tomorrow, regardless of the merits of the bill, and regardless of how one may feel about the question of whether it should be passed, the Senate of the United States will still preserve for itself the right of having a hearing on the bill, in order to afford people an opportunity to be heard with respect to it. The people have not been heard from. The only ones who have been heard from are the members of the Committee on the Judiciary, and they were not unanimous on the bill.

Mr. President, I ask unanimous consent to have inserted in the RECORD at this point, the address which the junior Senator from Minnesota had prepared for delivery on the pending bill. At least, I urge the reading of my remarks by the Presiding Officer, because I am sure they are in line with his general philosophy with respect to the bill.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR HUMPHREY

This bill, S. 719, strikes a mighty blow against the antitrust laws of the United States. It seeks to bestow unwarranted benefits upon big business of this country at the expense of small business. It aims to recover by stealth rights which Congress has long since determined belong to all businessmen, rather than to the giant few who have acquired and maintained illegal privileges to the detriment of competition and free enterprise. It seeks to emasculate and render impotent the Robinson-Patman bill, which was adopted almost unanimously by this Senate in 1936.

I find myself in full accord with the minority views of the Committee on the Judiciary, and further, in full accord with the majority of the Federal Trade Commission, which opposes this bill but suggests certain amendments thereto to bring the bill within the spirit and purpose of the Robinson-Patman Act, which it seeks to amend and alter.

I find it incredible that my colleagues on the Judiciary Committee should bring this bill to the Senate without giving those who oppose it an opportunity of presenting their objections to it. The National Association of Retail Druggists, the National Federation of Independent Business, the National Association of Wholesale Grocers, and other organizations have voiced a desire to be heard on this bill before the committee. These organizations represent a large segment of our economy. If they feel that the bill is not good for them, we are entitled to know it and to know the reason why. Unless this bill be a deliberate attempt to weaken and destroy the antitrust laws, then it can surely stand the bright light of public examination.

It is the avowed purpose of S. 719 to write a recent decision of the Supreme Court into law before the Federal Trade Commission has even issued its findings and order in conformity with that decision. The bill is directed at what is known as the good-faith proviso in the Clayton Act, as amended by the Robinson-Patman Act. This proviso sets up a limited procedural defense which permits price discriminations to be justified or excused, to some extent, where the violator shows that his discriminations were made in good faith and without lessening competition.

S. 719 makes good faith a complete justification for indefinite continuation of discriminatory pricing, no matter what the competitive effect may be, or how great the tendency to create monopoly. Good faith is thus made a substantive defense, rather than a procedural defense which might be rebutted by a showing that the discriminatory pricing in question has the effect of destroying competition or creating monopoly in commerce.

In the Standard Oil case recently decided by the Supreme Court, the Federal Trade Commission took the position that the present amended Clayton Act authorizes it to issue a cease-and-desist order against a discriminatory practice which has been shown to have the harmful effects upon competition specified in the statute, even though a technical, or procedural, good-faith defense had been made out for the practice. The Supreme Court ruled that the present statute does not give such authority and that good faith is thus an absolute defense. This contravenes the intent of Congress in inserting the good-faith clause in the Robinson-Patman Act, and brings us back to 1936 when Congress passed that act for the express purpose of making effective the relatively impotent Clayton Act. I must point out that in

my judgment S. 719 in effect restores the Clayton Act to its original impotence and completely nullifies the Robinson-Patman amendment thereto.

The Supreme Court and S. 719, as presented to the Senate, adopt the principle that it shall be good-faith justification to discriminate to meet a nondiscriminating (or lawful) price, but illegal to discriminate to meet a discriminating (or unlawful) price. Reduced to its practical application, this simply means that the businessman may adopt unlawful methods to attack others who are behaving in a lawful manner, but may not defend himself against unlawful attack by the same methods.

As the many lawyer members of this chamber know, it has long been recognized that illegal methods are not permissible as a means of attack, but may be used to defend oneself against an illegal attack, provided of course, that the methods adopted for defense are, in view of the facts of the case, necessary to defense and nothing more. Thus, in the criminal law, a man may not attack another with a deadly weapon, but may defend himself with a deadly weapon if first attacked by a like weapon. This was apparently intended when Congress wrote subsection 2 (b) of the amended Clayton Act. The report of the House conferees on the Robinson-Patman bill gave an explanation of the good-faith defense as follows:

"In connection with the above rule as to burden of proof, it is also provided that a seller may show that his lower price was made in good faith to meet an equally low price of a competitor, or that his furnishing of services or facilities was made in good faith to meet those furnished by a competitor. It is to be noted, however, that this does not set up the meeting of competition as an absolute bar to a charge of discrimination under the bill. It merely permits it to be shown in evidence. This provision is entirely procedural. It does not determine substantive rights, liabilities, and duties. They are fixed in the other provisions of the bill. It leaves it a question of fact to be determined in each case, whether the competition to be met was such as to justify the discrimination given, as one lying within the limitations laid down by the bill, and whether the way in which the competition was met lies within the latitude allowed by those limitations.

"This procedural provision cannot be construed as a carte blanche exemption to violate the bill so long as a competitor can be shown to have violated it first, nor so long as that competitor cannot be met without the use of oppressive discriminations in violation of the obvious intent of the bill. * * * One violation of law cannot be permitted to justify another. As in any case of self-defense, while the attack against which the defense is claimed may be shown in evidence, its competence as a bar depends also upon whether it was a legal or illegal attack. A discrimination in violation of this bill is in practical effect a commercial bribe to lure the business of the favored customer away from the competitor, and if one bribe were permitted to justify another the bill would be futile to achieve its plainly intended purposes." (CONGRESSIONAL RECORD, vol. 80, pt. 9, p. 9418.)

If the good-faith proviso is to have any meaning, it must permit a seller to engage in discriminatory selling in self-defense against a discriminatory attack—at least until those who enforce the antitrust laws can arrive on the scene and stop the original unlawful attack. The bill offered by the distinguished Senator from Nevada licenses a seller to ignore the provisions of the Robinson-Patman Act against discriminatory pricing whenever and wherever he finds a seller who is attempting to follow the act. This is a mockery of the amended Clayton Act, a mockery of all established principles of law relating to self-defense, and promotes monopoly in American business.

Permit me to translate this point into a further analogy. If a man armed with a gun seeks to burglarize my house, I may also defend my house with a gun, to the extent that such defense is necessary, but I certainly am not authorized to burglarize a third person's house, merely because the burglar had entered my own. Rather than defending my own castle, I would be attacking that of another for personal gain.

This principle was recognized in the Senate report in the Robinson-Patman bill, which stated in part:

"The weakness of present section 2 lies principally in the fact that: (1) It places no limit upon differentials permissible on account of differences in quantity; and (2) it permits discriminations to meet competition, and thus tends to substitute the remedies of retaliation for those of law, with destructive consequences to the central object of the bill. Liberty to meet competition which can be met only by price cuts at the expense of customers elsewhere, is in its unmasked effect the liberty to destroy competition by selling locally below cost, a weapon progressively the more destructive in the hands of the more powerful, and most deadly to the competitor of limited resources, whatever his merit and efficiency. While the bill as now reported closes these dangerous loopholes, it leaves the fields of competition free and open to the most efficient, and thus in fact protects them the more securely against inundations of mere power and size." (S. Rept. No. 1502, to amend Antitrust Act, January 16, 1936, 74th Cong., 2d sess., p. 4.)

Translated into its lowest common denominator, this bill permits a chain store, or any other huge business enterprise, to go into any area or section of this Nation where a local businessman, due to his ingenuity and enterprise, may have been able to set a low price on his particular product and to meet that price, even though the price is below that prevailing in the larger businesses' other outlets. The larger business may do this because its losses are made up on sales at higher prices in other localities, but the local businessman who is solely dependent for existence upon his local trade must eventually be destroyed in the battle of prices with his larger adversary. Once the local business is destroyed the consumers in that locality are at the mercy of the larger competitor, which may then increase its price with impunity.

This situation is precisely what the Robinson-Patman Act was intended to remedy. If the large business reduces its prices in a particular locality, even though to meet those of a local competitor, such reductions should be lawful under the existing provisions of the act only if they are not intended to destroy the local competition or have the effect of promoting monopoly. That was the purpose of the Robinson-Patman Act, and I say that this purpose must be preserved, if we are to maintain the existence of the small, independent businessman who is the backbone of our system of free enterprise economy.

S. 719, if adopted will restore good faith as a justification for continuing discriminations which may ultimately destroy small business. Any weakening of the law against discriminations works to the disadvantage of small business and to the advantage of big business. This is necessarily true because discriminations tend to destroy both small buyers and small sellers, no matter whether such small-business units are either more or less efficient than their big competitors who survive.

Thus, the chairman of the House managers, Congressman Utterback, before a vote on the conference report on the Robinson-Patman bill was taken, gave his colleagues the following example of how the good faith clause of the original Clayton Act operated to the disadvantage of small buyers:

House committee hearings showed a discrimination of 15 cents a box granted by Colgate-Palmolive-Peet Co. on sales of soap to the A. & P. chain * * * but the committee hearings show a similar discount of 15 cents a case granted by Procter & Gamble to the same chain. If this proviso were construed to permit the showing of a competing offer as an absolute bar to liability for discrimination, then it would nullify the act entirely at the very inception of its enforcement, for in nearly every case mass buyers receive similar discriminations from competing sellers of the same product. (CONGRESSIONAL RECORD, vol. 80, pt. 9, p. 9418.)

The fact that S. 719 provides that good faith defense shall be limited only to those situations in which the discriminatory price is used to meet another lawful price in no way lessens the harmful effects of this defense. The Government would, under such a provision, be confronted by the great difficulty of determining the origin of a discriminatory practice, and proving that the original price was an unlawful price. This would throw an almost impossible burden upon the Government.

Furthermore, small buyers who do not have the costly facilities for handling large purchases—as are frequently necessary in dealing with "off brand" products—will be the victims of discriminations on the part of other sellers. This is illustrated by the hard facts of the Standard Oil case. Here, it is plain that those buyers who had storage and handling facilities which made it possible for them to deal in "off brand" gasoline were granted discriminatory low prices by the sellers of known brands, while those buyers who lacked the capital to install such facilities were denied equal prices. The Supreme Court described these favored customers as follows:

"The distinctive characteristics of these 'jobbers' are that each (1) maintains sufficient bulk storage to take delivery of gasoline in tank-car quantities (of 8,000 to 12,000 gallons) rather than in tank-wagon quantities (of 700 to 800 gallons) as is customary for service stations; (2) owns and operates tank wagons and other facilities for delivery of gasoline to service stations; (3) has an established business sufficient to insure purchase of from one to two million gallons a year; and (4) has adequate credit responsibility." *Standard Oil Co.* v. *Federal Trade Commission* (340 U. S. 231, 244).

What is the practical effect of the Supreme Court's upholding Standard's "good faith" discriminations of these favored large buyers? First, the ultimate ruin of the small refineries who make and sell "off brand" gasoline and who find the Detroit market foreclosed by Standard's discrimination in favor of the only Detroit buyers who are equipped to handle their products. Second, the ultimate ruin of the independent filling stations, their probable acquisition, by Standard, or other major oil companies, and a further disappearance of potential market outlets for any small refineries who attempt to enter the Detroit-area market in the future.

Let us assume that the Federal Trade Commission's order in this case should stand. What would be the results? Standard would either have to lower its price to all buyers in the Detroit area or give up a portion of its market to small dealers of off-brand gasoline. If Standard would choose to lower its prices to all buyers, the ruinous pressure on the smaller buyers would be relieved, all filling stations in the area would have the opportunity of initiating and maintaining price cuts, and all Detroit consumers of gasoline would have enjoyed lower prices, rather than those limited numbers of consumers who purchased their gasoline at the favored filling stations.

On the other hand, if Standard would choose to maintain its price level and give up a portion of the business to the small refiners of off-brands, what would happen? First, those consumers who purchased from the favored filling stations would continue to get their off-brand gasoline at the lower price anyway. Second, one or more small refineries would gain a toehold in the market, and—assuming their products are of equal quality with Standard's—would gain increasing consumer acceptance, increasing competing strength, and, sooner or later, would accomplish what Standard's discriminations are calculated to prevent, namely, force Standard's whole price level down and take away a portion of its market as well.

This problem of competition between large sellers and small sellers, and between large buyers and small buyers, is not an isolated one. It is duplicated in market after market throughout this Nation. Its solution is strengthening the laws against monopoly and the destruction of competition, rather than adoption of a further law, as here proposed, which will place in the hands of the unscrupulous an instrument for the lawful destruction of competition and the promotion of monopoly.

I would be derelict in my duties to the people of my great State if I did not also point out that if this bill becomes law, it will legalize and make permanent basing-point systems previously held by the courts to be illegal and destructive of competition. Such decisions, particularly in the cement industry, have in my judgment done much to pave the way for the development of new industry in those sections of the Nation, such as the South, Northwest, and Mountain West, which have formerly been impoverished of their rightful industrial development.

Let us see how such basing-point systems can arise. To operate a basing-point system, it would be necessary only for the individual sellers to make each mill a basing point which offers a base price of some kind. In many industries this already exists, while in others the adjustment can be made with little difficulty. With each mill a basing point, each mill's price in its natural market area is a nondiscriminatory price, and therefore a lawful price. Hence, each mill may charge a lawful, nondiscriminatory price in its own natural market area, while absorbing freight to meet the lawful prices prevailing in each of the other mill's natural market area. The result will be, of course, a systematic reciprocal matching of prices on the part of all mills—in short, a basing-point system that effectively chokes off further competitive development in the industry and preserves the status quo.

Under S. 719, each large member of a given industry, having established a basing point in its own natural market area and achieved a virtual monopoly of that market area, may absorb freight to, and meet the price in, all other markets, citing as its reason therefor the necessity of meeting in "good faith" the prices of some small, struggling competitor in a far-away market. This, if systematically engaged in by all of the leaders of the given industry, could effectively and legally destroy all new or small competition wherever it may arise, and would inevitably discourage the development of industrially backward areas of the Nation.

Permit me to quote a portion of the Federal Trade Commission's report to the Judiciary Committee on this bill. The Commission states:

"While the Commission is firmly convinced that the good faith defense should not be available as a justification for discriminations which have a substantial and serious effect toward monopoly, we recognize that there is an area in which it may be desirable to permit justification on this basis for discriminations whose effects, while still within the test of section 2 (a), fall short of substantially suppressing competition or tending to monopoly in a line of commerce. It is suggested that this can be accomplished by establishing good faith as a complete defense except in those cases where the effect may be substantially to lessen competition or tend to create a monopoly in any line of commerce.

"The standard of injury in section 2 of the Clayton Act was broadened by the Robinson-Patman Act to include discriminations not only where the effect may be to substantially lessen competition or tend toward monopoly in a line of competition, but also where the effect may be to injure, destroy or prevent competition 'with any person who either grants or knowingly receives the benefit of such discrimination or with the customers of either of them.' We can see no particular objection to making the good faith defense available as to discriminations which injure, destroy, or prevent competition with a particular person, but which still fall short of substantially lessening competition or tending to create monopoly in a line of commerce.

"Two other observations may be made regarding the provisions of S. 719. The bill would create a new subsection (g), leaving undisturbed the language of subsection (b) which contains the basic proviso relating to the good-faith defense. The provisions of the statute would seem less confusing if amendments affecting subsection (b) were made directly to that subsection, rather than by way of a new subsection.

"S. 719 also contains a proviso to the effect that a seller shall not be deemed to have acted in good faith if he knew or should have known that the price being met is unlawful. In the decision of the Supreme Court in the Standard Oil case it was observed that the good faith defense was limited to the meeting of a 'lawful' price, and the statute now provides that the burden of sustaining justification rests wholly with the one charged with unlawful discrimination. This proviso may well be argued as shifting to the Commission part of the burden of showing lack of justification, a shift which would not be desirable from the standpoint of effective enforcement of the statute. We recommend that the proviso be deleted.

"To accomplish the changes recommended in S. 719, it is suggested that it be amended to revise section 2 (b) of the act as follows, the italicized portion representing language which would be new to the statute:

"'(b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however,* That *unless the effect of the discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, it shall be a complete defense for a seller to show* that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.'

"The Commission deeply appreciates this opportunity of expressing its views on the pending legislation. The Commission wishes to emphasize that the views which it has expressed are based on the conclusion that the basic policy of section 2 of the Clayton Act—to prevent those discriminations which will suppress competition and lead toward monopoly—should not be made wholly subsidiary to the right to meet competition in good faith."

I agree with the views of the Federal Trade Commission. If we must amend the Robinson-Patman Act in the light of the recent Supreme Court decision, let us make it clear for all time that a "good faith" defense to charges of discriminatory practices shall be limited to those situations where the discrimination does not substantially lessen competition or tend to create a monopoly in any line of commerce.

Let us tell the small-business men, who are the bone and sinews of our free-enterprise, competitive economy, that we are forever opposed to practices which destroy their livelihood and the heritage of their children.

Let us reaffirm the intent of Congress when it amended the Clayton Act 15 years ago, rather than giving lip service to the antitrust laws while surreptitiously destroying those laws. I for one will not be party to such a steal. S. 719 either represents a confirmation of a Supreme Court decision, and consequently a vain and unnecessary act, or it is a sly attempt to deprive small business and the public of a portion of their protection against unfair competition and monopoly. If the course in this bill is the latter—and I am convinced that this is so—I cannot vote for it and in good conscience face the thousands of small-business men of my State and tell them that I voted in their best interests and to protect them from the evils of monopoly.

The PRESIDING OFFICER (Mr. LONG in the chair). The present occupant of the chair would like to state that he is very grateful for the kind remarks of the junior Senator from Minnesota, which probably have gone far beyond any credit which the present occupant of the chair deserves in this fight to protect the independent merchants and consumers of the Nation. The Senator from Minnesota has been very diligent in his efforts to preserve the antitrust laws, and the present occupant of the chair is very grateful for his compliments.

Mr. MALONE. Mr. President, will the Senator yield?

Mr. HUMPHREY. Yes.

Mr. MALONE. I join the distinguished Senator from Minnesota in his compliments to the present occupant of the chair for his able presentation of the case. I should like to ask the junior Senator from Minnesota if the proposed legislation would do anything which the Supreme Court of the United States did not do in the opinion rendered by it?

Mr. HUMPHREY. It is the opinion of the junior Senator from Minnesota that it would.

Mr. MALONE. In what way? If the opinion which the Supreme Court rendered does not lay down a principle for the Government to follow, what does it do?

Mr. HUMPHREY. The opinion of the Supreme Court is just that. It is an opinion. Opinions are ofttimes reversed, particularly when there is a split decision, and the advocates of the pending measure outside of Congress, who are vitally interested in the measure, know that to be a fact.

The bill not only does what the Supreme Court did in the Standard Oil of Indiana case, but it goes much further, in the sense that it provides not only for discriminatory pricing and competition, in order to hold one's customers,

but permits a company to go into the field to seek new customers.

Mr. MALONE. The opinion of the Supreme Court, regardless of the probabilities—and there are people who believe that it might be reaffirmed—and regardless of any possibility of reversal, the bill would legalize officially through act of Congress what the Supreme Court said in its opinion. Is that correct?

Mr. HUMPHREY. The bill does that, plus.

Mr. MALONE. The principle has been laid down by the Supreme Court. The distinguished junior Senator from Minnesota simply says this bill would allow this same principle to be carried further.

Mr. HUMPHREY. I simply refer the Senator from Nevada to pages 8, 9, 10, 11, and 12 of the minority views, signed by the Senator from Tennessee [Mr. KEFAUVER] and the Senator from Washington [Mr. MAGNUSON]. If he will read those pages he will find the differences which exist between the Supreme Court's decision in the Standard Oil case and the bill and the committee report, because the committee report goes far beyond what the Supreme Court ever encompassed in its majority opinion, and surely far beyond anything encompassed in the opinion of the minority of the Court.

Mr. MALONE. Mr. President, will the Senator yield?

Mr. HUMPHREY. I am glad to yield.

Mr. MALONE. I understood the distinguished Senator from Minnesota to say that the bill does conform to the opinion of the Court, although such opinion might be reversed, but that the bill went further, but on the same principle already affirmed by the Supreme Court. Is that what the Senator said?

Mr. HUMPHREY. I prefer to use my own words. I say that the pending bill is an attempt to legislate into statutory law the opinion of the Supreme Court of the United States in the Standard Oil Co. of Indiana case.

Mr. MALONE. That is what I understood the bill was.

Mr. HUMPHREY. Plus a great many other items which are well described in the report of the majority of the Judiciary Committee—for example, such items as freight absorption and basing points. All of those have been encompassed by the words of the legislative history of the bill, as subscribed to by the majority report of the Judiciary Committee; and one who has had the experience in legislation the Senator from Nevada has had, must know that the majority report is very binding upon any court in connection with the interpretation or administration of any particular law. In this instance we find the majority report including such items as freight absorption, the frequency of meeting lower prices and gaining or retaining customers.

Mr. President, in this connection I point out that the words "gain customers" appear in the majority report, whereas the Supreme Court's decision relates entirely to the matter of retaining customers. However, the words "gain customers" are included in the report of the majority of the committee. I point out to the Senator from Nevada that all those points were alluded to while the Senator was off the floor of the Senate; they were alluded to by the Senator from Tennessee [Mr. KEFAUVER], in his interrogation of the Senator from Colorado [Mr. JOHNSON]; and in that colloquy he brought out these points again and again.

So I think it is repetitious to cover them at this time. Therefore, in view of the lateness of the hour, since it is now 7:30 p. m., and since I have control of the time——

Mr. MALONE. Mr. President, I want the floor in my own right. I shall wait for it until the Senator from Minnesota concludes. I object to any adjournment or recess.

Mr. HUMPHREY. Mr. President, certainly we do not want anyone to be cut off in debate. I had hoped that we could conclude the session at about this hour. However, since it seems that we cannot, I shall retain the floor and shall continue my discussion of this subject.

Mr. MALONE. Very well. I will miss the plane on which I have a reservation, and will take the next plane.

Mr. HUMPHREY. Mr. President, I shall continue with my discussion of this very important measure.

One of the things which was pointed out this afternoon, which seemed to be quite important to me, was the history of the development of the Clayton Act and its weaknesses, which were exposed from the year 1916 to the year 1936, during some 20 years of application and interpretation. Finally, in 1936 the Robinson-Patman Act was passed, as was so well pointed out by the Senator from Louisiana; and there came the development of small-business enterprise after that particular period.

Mr. President, what does this bill do? In substance, it repeals the Robinson-Patman Act and takes away the powers which were incorporated in that act for the protection of small-business enterprises, and reverts to section 2 of the Clayton Antitrust Act, which was found to be weak, faulty, and literally helpless in combating trusts and their effect upon small-business enterprise in the United States.

Those who support the pending bill, although they may feel that they are supporting a measure to permit competition in good faith and the development of a price structure which is arrived at on the basis of good faith, actually are supporting a measure which would revert to a system which did not work and was most unfortunate for the small-business-enterprise system of the Nation.

I think that is well documented in the minority views, from which I now read, on page 4:

In its report accompanying the Clayton Act, the Senate Judiciary Committee said:

"Broadly stated, the bill, in its treatment of unlawful restraints and monopolies, seeks to prohibit and make unlawful certain trade practices which, as a rule, singly and in themselves, are not covered by the act of July 2, 1890 (the Sherman Act) or other existing antitrust acts and thus, by making these practices illegal, to arrest the creation of trusts, conspiracies, and monopolies in their incipiency and before consummation."

Among the practices which Congress specifically legislated against in the Clayton Act was price discrimination. In section 2 of the act, price discrimination was forbidden where the effect "may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

Unfortunately, however, Congress attached to this prohibition what has become known as the good-faith proviso; namely, "that nothing herein contained shall prevent discrimination in price * * * in the same or different communities made in good faith to meet competition."

This proviso had the practical effect of nullifying the law. When charged with violating its provisions, firms had little difficulty in proving that they were merely meeting competition "in good faith." Thus, for all practical purposes, corporations were as free to use price discrimination to destroy competition as in the days of the old Standard Oil Trust.

During the twenties, destruction of small business was particularly serious in retail trade, with chain stores eliminating their independent rivals by the thousands. In a comprehensive investigation, the Federal Trade Commission found that the chain stores had persistently sought out and demanded special price considerations and had cut prices in localities where competition was strong, absorbing their losses through high prices in localities where competition was weak.

As the law stood, however, the Commission felt that little could be done to stop the discriminations, stating:

"The reason is that the Clayton Act itself specifically permits price discrimination 'in the same or different communities made in good faith to meet competition.'"

Mr. President, I note that that is exactly what the pending bill does.

I read further from the minority views:

"The Commission has no evidence which would establish that price discrimination by chain stores has not been in good faith to meet competition and there is good ground to conclude that in many cases it has been for that purpose."

As a solution to the problem, the Commission recommended that the "good faith" defense be eliminated altogether. The Congress, however, did not wish to go that far. It is the Commission's view, and it is our view, that what the Congress did do, in enacting the Robinson-Patman amendment to the Clayton Act, was to adopt a position between the extremes—the extremes, on the one hand of good faith being a complete defense, and on the other, of good faith being eliminated altogether. According to this view, good faith became a procedural defense which could be used to rebut a prima facie case of price discrimination. As recently as 1947, this view apparently was also shared by the Supreme Court, for in the Cement decision the Court stated:

"Section 2 (b) [of the Clayton Act, as amended] provides that proof of discrimination in price (selling the same kind of goods cheaper to one purchaser than to another), makes out a prima facie case of violation, but permits the seller to rebut the prima facie case thus made by showing that his lower price * * * was made in good faith to meet an equally low price of a competitor. * * *"

Less than 3 years later, however, the Court, on January 8, 1951, decided in the Standard Oil of Indiana case that in enacting the Robinson-Patman Act Congress did not limit the good faith proviso; that it is just as complete as it was under section 2 of the old Clayton Act.

This raises the question as to why the Seventy-fourth Congress bothered to pass the Robinson-Patman Act at all. If the

Court's interpretation of the good-faith defense in the Standard Oil decision is correct, all that was accomplished in enacting that law, aside from adding a number of minor provisions, was to change the term "meeting competition" to "meeting the equally low price of a competitor." If this is all that was accomplished, the Seventy-fourth Congress labored and brought forth a mouse. The chain-store investigation and other reports of the Federal Trade Commission, the extensive hearings and committee reports, the legislative debates, and the acts themselves have all gone for naught. We are now back where we started 38 years ago.

Mr. President, I think this points up what the problem is in reference to the pending legislation, and I think that the minority point of view, as expressed in the minority views, states quite conclusively what has been stated repeatedly on the floor this afternoon, that an attempt is being made by the pending bill to revert back to the pre-Robinson-Patman era. I shall do everything I can, either to have this bill recommitted to the committee for appropriate hearings, which I think is desirable—and I would surely suggest that the Senate consider the recommittal of the bill to the Judiciary Committee, and it may be necessary that such a motion be made or, secondly, if that should fail, to have a vote upon the Kefauver amendment, which if adopted would afford protection and would permit competition in good faith so long as it does not lessen competition or permit monopoly. I cannot see for the life of me how anyone could oppose the Kefauver amendment, which reads:

Unless the effect of the discrimination—

Meaning price discrimination—

may be substantially to lessen competition or tend to create a monopoly in any line of commerce.

In other words, the amendment of the Senator from Tennessee says, "If price discrimination is needed in order to meet competition in good faith, well and good, so long as it does not lessen competition, and so long as it does not tend to promote monopoly."

Mr. President, I want to yield the floor, now, to the Senator from Nevada, for whatever remarks he may wish to make; after which I shall move a recess.

Mr. MALONE. Mr. President, I appreciate the Senator's courtesy. I merely want to say I think it an inappropriate time to bring into the debate the names of other Senators, when they are not here to answer for themselves. The distinguished Senator from Minnesota mentioned that the minority leader, or some other Senator on this side, was responsible for bringing up the legislation. It is entirely in order, as long as the Senate is in session, to debate and make any statement one may desire, but I think it entirely out of order to bring in any other Senator's name, when it was understood, at least tacitly, that the debate really had ended, unless some Senator wanted to remain here to debate with the Senator who was then on the floor.

I want to say that I have sent for the Senator from Nebraska [Mr. WHERRY], minority leader. I think he is perfectly willing and able to take care of himself, when he is on the floor; but he is not on the floor at the moment.

I think it is not a very courteous thing to bring into the debate the names of other Senators who are not present to protect themselves.

I merely want to remain here, now, until we either adjourn or settle the situation to the satisfaction of the junior Senator from Minnesota.

I have already joined in complimenting the Senator from Louisiana, for whom I have the highest regard. There are times when we disagree, but in the main I find that we agree in principle regarding many things.

RECESS

Mr. HUMPHREY. I move that the Senate stand in recess until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 7 o'clock and 44 minutes p. m.) the Senate took a recess until tomorrow, Thursday, August 2, 1951, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate August 1, 1951:

DIPLOMATIC AND FOREIGN SERVICE

Harold Sims, of Tennessee, now a Foreign Service officer of class 3 and a secretary in the diplomatic service, to be also a consul general of the United States of America.

D. Eugene Delgado-Arias, of Virginia, for appointment as a Foreign Service officer of class 3, a consul, and a secretary in the diplomatic service of the United States of America.

The following-named persons for appointment as Foreign Service officers of class 4, consuls, and secretaries in the diplomatic service of the United States of America:

Julian P. Fromer, of New York.
George W. Skora, of Arizona.
J. Raymond Ylitalo, of Minnesota.

Stephen H. McClintic, of Maryland, now a Foreign Service officer of class 5 and a secretary in the diplomatic service, to be also a consul of the United States of America.

Rodolfo O. Rivera, of North Carolina, a Foreign Service staff officer, to be a consul of the United States of America.

The following-named Foreign Service reserve officers to be consuls of the United States of America:

Kenneth R. Boyle, of Oregon.
H. Franklin Irwin, Jr., of Virginia.

Samuel Atkins Morrow, of Tennessee, a Foreign Service reserve officer, to be a vice consul of the United States of America.

COLLECTOR OF CUSTOMS

Katherine D. Nordale, of Juneau, Alaska, to be collector of customs for customs collection district No. 31, with headquarters at Juneau, Alaska, in place of James J. Connors, resigned.

IN THE ARMY

CHIEF OF THE NATIONAL GUARD BUREAU

Maj. Gen. Raymond Hartwell Fleming, O165022, National Guard of the United States, Army of the United States, to be Chief of the National Guard Bureau, with the rank of major general, for a period of 4 years from date of acceptance, under the provisions of section 81, National Defense Act, as amended.

IN THE NAVY

Admiral William M. Fechteler, United States Navy, to be Chief of Naval Operations in the Department of the Navy, with the rank of admiral, for a term of 4 years.

Vice Adm. Donald B. Duncan, United States Navy, to be Vice Chief of Naval Operations in the Department of the Navy, with the rank of admiral while so serving.

Admiral Lynde D. McCormick, United States Navy, to be commander in chief, Atlantic and United States Atlantic Fleet, with the rank of admiral while so serving.

IN THE MARINE CORPS

The following-named officers of the Marine Corps for temporary appointment to the grade of major general, subject to qualification therefor as provided by law:

Thomas J. Cushman Vernon E. Megee
William O. Brice John T. Selden

HOUSE OF REPRESENTATIVES

WEDNESDAY, AUGUST 1, 1951

The House met at 12 o'clock noon.

The Chaplain, Rev. Bernard Braskamp, D. D., offered the following prayer:

O Thou whose divine love never fails and never forgets or forsakes us, Thou knowest how greatly we need Thee in these dark and tragic times to guide our thoughts, to answer our doubts, and to keep our faith strong and steadfast.

Grant that we may be men and women who carry the light of truth and righteousness in our hearts and may our loyalty be unwavering, our courage unfaltering, and our efforts untiring as we seek to build the kingdom of peace and brotherhood upon the earth.

Show us how we may bring about a closer fellowship and a better understanding between all the nations. Help us to recognize our kinship. May we see how much we have in common and how much we can do to minister to one another's welfare and happiness.

In Christ's name we bring our petition. Amen.

The Journal of the proceedings of yesterday was read and approved.

SWEARING IN OF MEMBER

Mr. McCORMACK. Mr. Speaker, I ask unanimous consent that the gentlewoman from Pennsylvania, Mrs. VERA BUCHANAN, be permitted to take the oath of office. The certificate of election has not arrived, but there is no contest and no question with regard to her election.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mrs. BUCHANAN appeared at the bar of the House and took the oath of office.

FLOOD CLAIMS ACT OF 1951

Mr. BOLLING. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. BOLLING. Mr. Speaker, I have today introduced a bill to provide payment for property losses resulting from the 1951 floods in the States of Kansas, Missouri, and Oklahoma, and for other purposes, with the short title "Flood Claims Act of 1951."

Senator HENNINGS, of Missouri, is introducing a companion bill in the other body.

Under this legislation, there would be established within the executive branch of the Government a Flood Claims Commission of five members, appointed by the President with the advice and consent of the Senate. Two members of the Commission would be residents of the flood area. It would be the duty of the Commission, immediately upon its organization, to survey and determine the extent, location, and character of damage to property in the flood area, and thereafter, on the basis of its findings, to establish a system for the receipt and adjudication of claims for flood losses to property which would be paid by the United States.

In recognition of the fact that the flood represents a national economic disaster for which the Federal Government should assume some responsibility for restoration of property losses, the bill provides a formula for Federal grants which has as its chief purpose recompense to those who are least able to recoup their losses without assistance from the Federal Government. Under this formula, there would first be deducted from any claim the sum of $100. This limitation has been incorporated in order to prevent the filing of large numbers of frivolous claims. Thereafter the claims would be discounted on the basis of 25 percent for the first $10,000, 50 percent for the next $90,000, and 75 percent of the remainder up to a statutory limitation of $1,000,000 on all claims for any one claimant. The formula will also provide for the further deduction from approved claims of the value of prior rehabilitation not paid for by the claimant and the amount of any insurance or other indemnity collected or collectible for such losses.

PERMISSION TO ADDRESS THE HOUSE

Mr. COX. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request ofthe gentleman from Georgia?

There was no objection.

[Mr. Cox addressed the House. His remarks appear in the Appendix.]

AMERICAN INDIAN EXPOSITION

Mr. MORRIS. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

Mr. MORRIS. Mr. Speaker, I am happy to extend to every Member of the House and your families and friends a cordial invitation to attend the American Indian Exposition, at Anadarko, Okla., located in my congressional district, beginning August 13, this year. You will see there one of the most colorful events in all America. A short description of this coming event has been prepared by the committee in charge of this great celebration, as follows:

COME TO THE INDIAN COUNTRY

Anadarko, Okla., located in the heart of the Nation, is the home of the American Indian Exposition, the most interesting and exciting show of its kind in America.

Through the week of August 13–18, you will see the Indians in their colorful dances and ceremonies.

Here is a beautiful setting, bordered by frontier battlefields and places of historic interest, you will see actual descendants of famous Indian chiefs and warriors perform the true Indian war dances handed down from generation to generation. You will marvel at the feats of marksmanship with bow and arrow, and other unusual features will hold you spellbound during this remarkable show.

Anadarko is headquarters for the Southern Plains Indian Agency, which guards the interests of thousands of Indians. During this show you will also see Caddos, Comanches, Cheyennes, Delawares, Wichitas, and over 20 tribes from Arizona and New Mexico. It is the greatest Indian show in America. Come this year and see the real Americans revive the glorious traditions of the past.

This is an annual event and you have a standing invitation to attend each year. We shall be truly honored to have you as our guest at your convenience.

KANSAS-MISSOURI FLOOD DISASTER

Mr. DONDERO. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. DONDERO. Mr. Speaker, yesterday morning General Pick, Chief of Army Engineers, appeared before the Committee on Public Works and gave that committee a detailed report on the flood disaster on the Kansas and Missouri Rivers. It is appalling. Thousands of homes were lost; lives were lost; 16,000 head of livestock were lost; and 640 bridges swept away. The estimated damage exceeds $1,000,000,000. It is the worst flood disaster to occur in this country in more than 100 years.

Our committee this morning voted to visit the scene of the disaster on Friday of this week. Congress owes a debt to the people of America first. We have been spending money all over the world to take care of other people. We are constantly passing legislation to provide money and relief for nearly every nation on the face of the globe. We have a direct obligation to protect our own people, and now especially those in the Kansas and Missouri River Basins. A repetition of such a tragic disaster must be prevented in the future. For that purpose I am introducing legislation to authorize the completion of flood plans for the Missouri Valley as prepared by the Corps of Army Engineers, and I hope that it will have the support of the Congress. In this way we can discharge our obligation to the people of that distressed area and make sure they shall not again experience the appalling disaster which overwhelmed them.

Mr. SCRIVNER. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Kansas?

There was no objection.

Mr. SCRIVNER. Mr. Speaker, the adoption of House Joint Resolution 303, on yesterday, was a step forward in the solution of problems of the hard-hit flood areas of the Midwest. However, it did not go far enough to afford a permanent solution.

The Slum Clearance Housing Act anticipates removal of housing in the blighted areas and the redevelopment of that same area.

In many cases it is not desirable to rebuild in that particular area which has been devastated by floods. Because of the possibility of a recurring flood at some future time, logic dictates the desirability of locating homes in a higher area.

Furthermore, many communities have exhausted their funds, but can arrange to repay any advanced funds by future tax levies.

Therefore, Mr. Speaker, I have today introduced a joint resolution which will authorize, in addition to grants, loans to communities, and the privilege of selecting the area upon which the housing is to be constructed.

Just as the need is great and immediate for temporary housing, it is no less urgent for permanent homes.

I trust this resolution will be given the speedy and unanimous support given House Joint Resolution 303.

STATEMENT ON CONTROLS BILL

Mr. HALLECK. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. HALLECK. Mr. Speaker, the President has again served notice on the country that he would rather play politics with the new controls bill than perform the function of his office, which is to administer laws passed by Congress.

In his intemperate criticism of the new legislation, Mr. Truman has exposed his hand. He is determined that the new law shall not work, if he can help it. In one breath he condemns the bill as a bad one that will not do the job. In the next breath he admits that the executive department has not yet given provisions of the legislation careful study.

This law is adequate to do the job if properly and judiciously administered.

The President sounds off about Republican-sponsored amendments and protests that the bill "prevents us from giving any further price relief to the millions of consumers already penalized by the price rises in the fall of 1950."

Mr. Truman has a conveniently short memory. Last September, Congress, with Republicans taking the lead, gave him a price-control bill in response to demands from the people. But the President said he did not want it then. So he refused to use it until late January,

although it had been on the books all during the time the prices he now complains about were going up.

As a matter of record, House Republicans last September supported the Kunkel substitute, which provided for a general freeze. But the Democratic leadership, on orders from the administration, turned that proposal down. Moreover, it is a matter of record that Republicans supported the Davis amendment to the present law, which would have provided for a 4-months' price freeze. But the Democrats ganged up on that one, too.

Mr. Truman has a long record of condemning the work of Congress before the ink is dry on new legislation. Time has proved him dead wrong before, and time will prove him wrong on this one if he properly does the job of administration he is supposed to do.

SPECIAL ORDERS GRANTED

Mr. SHAFER asked and was given permission to address the House for 30 minutes on tomorrow, at the conclusion of the legislative program of the day and following any special orders heretofore entered.

Mr. ANGELL asked and was given permission to address the House today for 30 minutes, following any special orders heretofore entered.

SOCIALIZATION OF THE ECONOMY

Mr. GWINN. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. GWINN. Mr. Speaker, do you know that daily someone in the Government gives up the idea of freedom and accepts nationalization or socialization instead?

On July 9, 1951, the President wrote to the Prime Minister of Iran, as follows:

> You know of our sympathetic interest in this country in Iran's desire to control its natural resources. From this point of view we are happy to see that the British Government has on its part accepted the principle of nationalization.
>
> Since British skill and operating knowledge can contribute so much to the Iranian oil industry I had hoped—and still hope—that ways could be found to recognize the principle of nationalization and British interests to the benefit of both.

How can our Government do that? How can we make war for freedom and talk and approve and adopt nationalization, socialization of the economy at home and abroad.

Socializing is simply taking over means of production by the state and depriving the people of the benefits of individual ownership of property and its management. How can we continue to do it?

JOSEPH BARNES

Mr. VELDE. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. VELDE. Mr. Speaker, Alexander Barmine, a former Russian Army general, testified yesterday that Joseph Barnes and Owen Lattimore were regarded as "our men" by the chief of the Soviet Army intelligence. Barnes was formerly foreign editor of the New York Herald Tribune and an official of the Office of War Information. At present he is an editor with the New York book-publishing house of Simon & Schuster.

I wish to call to the attention of the House what I shall term, in all charity, "a striking coincidence." Barnes' employers, Simon & Schuster, have just published a book on Communist China titled "Profile of Red China," by Lynn and Amos Landman. A review of the book in last Sunday's New York Herald Tribune, by Harold Isaacs, makes clear just what kind of book this is. Isaacs says it "sounds like an apologia for the Communist regime." He points out, for example, that the book makes absolutely no mention of the mass purges that have been going on in China and that the book claims the Red government has the loyal support of the masses of Chinese people. According to Isaacs, the book touches only fleetingly on such embarrassing incidents as the Communists' intervention in the Korean war.

Even the Washington Post says the book has "a distinctly ruddy tinge."

Perhaps it is only an amazing coincidence that Barnes should be employed by the firm that published such a book. But I should also point out that this book is merely one more in the long stream of books praising the Chinese Communists that have poured out during the last decade, and that Barnes, as editor and reviewer, has had a prominent role in seeing that the stream continued.

DEPARTMENT OF STATE

Mr. MEADER. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. MEADER. Mr. Speaker, at a meeting of the Committee on Expenditures in the Executive Departments which just recessed a few minutes ago, I offered the following resolution:

> *Resolved*, That a subcommittee of five members, three of the majority and two of the minority party, is hereby created, charged with the duty of conducting a penetrating investigation of the Department of State, including but not limited to its organizational structure, its procedures, its personnel, its performance, and its relationship to other Federal agencies.

Mr. Speaker, last Thursday in opposing the Phillips amendment I set forth my reasons at length. Among them was the recommendation that the cure for the present ills of our foreign policy was a penetrating investigation of the Department of State. I then said:

> Fourth. The real remedy for the weakness, the vacillation, and the disastrous failures in the conduct of our foreign affairs is a penetrating, nonpartisan examination of our Department of State through congressional investigation with the objective of rebuilding and strengthening the instrument through which we express and carry out our foreign policy.

The House Committee on Expenditures in the Executive Departments has unquestioned jurisdiction to conduct this investigation. It needs no additional authority from the House of Representatives. It possesses the subpena power. Perhaps, it will need additional funds. It certainly will need additional personnel, who should be of outstanding competence, if it is to conduct the thorough exploration which is so desperately needed.

Mr. Speaker, in my judgment, there is no single thing this Congress can do which will more surely benefit the people of this country and the world than to improve and strengthen the State Department. As I pointed out in the debate last Thursday, it is not so much Dean Acheson as an individual but the Department he heads and its policies, its acts, and its omissions to act that has incurred the disapproval of the American people.

I say we, as the elected Representatives of the people, owe a duty to the country to do something about our foreign policy and the Department responsible for executing that policy. We cannot hope to take intelligent and effective action unless we are informed. To that end, I hope the Committee on Executive Expenditures will act favorably and promptly on the resolution I have offered. I urge my colleagues, both Republicans and Democrats, to support this proposal to the end that the conduct of our foreign affairs may be conducted intelligently and effectively, in order that we can wage a better and more successful fight in the combat with Communist totalitarianism.

CONSUMERS' ECONOMY AND DEFENSE PRODUCTION ACT

Mr. JAVITS. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. JAVITS. Mr. Speaker, at a time of national emergency, what we should have sought in the Defense Production Act the President signed yesterday was the creation of a consumers' economy in our country and not a producers' economy or a middleman's economy which is pretty much what the act accomplishes.

We have heard before and we probably will again hear complaints in the House when working people come around for wage increases. Let us remember that the amended Defense Production Act very carefully cuts around the whole agricultural-price structure and that food prices can still go up being based on agricultural prices for which ceilings cannot be established except when they reach 100 percent of parity and this omits right now such staples as wheat,

corn, and citrus fruits. Meat prices far above parity and under ceilings cannot be rolled back in any way according to this amended act. If we honestly want price and wage stabilization, and I emphasize both, we had better understand we are in business every day and should adopt some very practical amendments to the Defense Production Act and do it as promptly as possible. Amendments to the act in the price-wage-stabilization provisions are certainly needed as to slaughtering quotas, roll-backs, mark-ups, and agricultural-price exemptions. Then and then only can anyone ask why, when wage earners ask—as they must under the present situation—for wage increases.

MILITARY RESERVES

Mr. BROOKS. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. BROOKS. Mr. Speaker, a subcommittee of the Committee on Armed Services is now holding extensive hearings on the Reserve problem. Over the past few months a great many Members of the House have spoken to me about the Reserve problem. I rise to take this opportunity to tell the Members of course they are welcome at this time if they wish to appear before the committee to give their ideas regarding the Reserve problem and time will be set for that hearing. I would like very much to have the names at an early date of the Members who are interested. This is a most important matter in which there is great national interest.

REFORESTATION

Mrs. BOLTON. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

Mrs. BOLTON. Mr. Speaker, in the whole matter of flood controls and conservation of our national resources, I am inclined to tell you what the State of Ohio did some years ago. A part of the national problem of floods and drought is that we have cut off all too much of our timber. May I tell you what the great State of Ohio did to provide incentive for the reforestation.

When my husband, your former colleague, was in the Ohio Legislature, he introduced and was successful in securing the passage of a bill which took out of the tax brackets such lands as the small-family farmer would put into trees. It has proved its value—and both the State and the farmer benefit when the trees are cut for lumber.

One of the best things that could happen in the important conservation program for this country would be for every State to further the planting of trees in similar fashion so that our children and their grandchildren may have forests to help control rainfalls and so definitely affect the increasingly serious floods on our great rivers.

Mr. HOFFMAN of Michigan. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Will the gentleman withhold that for a few moments?

Mr. HOFFMAN of Michigan. All I am trying to do is to get a quorum before the food bill is taken up. I will withdraw it for the present.

DISTRICT OF COLUMBIA APPROPRIATION BILL CONFERENCE REPORT

Mr. BATES of Kentucky. Mr. Speaker, I call up the conference report on the bill (H. R. 4329) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of such District for the fiscal year ending June 30, 1952, and for other purposes; and I ask unanimous consent that the statement on the part of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Clerk read the statement.

The conference report and statement are as follows:

CONFERENCE REPORT (H. REPT. NO. 778)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 4329) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of such District for the fiscal year ending June 30, 1952, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 5, 7, and 16.

That the House recede from its disagreement to the amendments of the Senate numbered 2, 3, 4, 6, 8, 11, 15, 17, 19, 22, 23, 24, and 27, and agree to the same.

Amendment numbered 1: That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$10,400,000"; and the Senate agree to the same.

Amendment numbered 9: That the House recede from its disagreement to the amendment of the Senate numbered 9, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$4,576,500"; and the Senate agree to the same.

Amendment numbered 13: That the House recede from its disagreement to the amendment of the Senate numbered 13, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$9,390,000"; and the Senate agree to the same.

Amendment numbered 14: That the House recede from its disagreement to the amendment of the Senate numbered 14, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$1,180,000"; and the Senate agree to the same.

Amendment numbered 18: That the House recede from its disagreement to the amendment of the Senate numbered 18, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$2,681,500"; and the Senate agree to the same.

Amendment numbered 20: That the House recede from its disagreement to the amendment of the Senate numbered 20, and agree to the same with an amendment, as follows: In lieu of the sum proposed by said amendment insert "$4,950,000"; and the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 10, 12, 21, 25, 26, and 28.

JOE B. BATES,
SIDNEY R. YATES,
FOSTER FURCOLO,
CLARENCE CANNON,
LOWELL STOCKMAN,
EARL WILSON,
Managers on the Part of the House.

LISTER HILL,
JOSEPH C. O'MAHONEY,
JOHN L. MCCLELLAN,
HOMER FERGUSON,
KENNETH S. WHERRY,
MATTHEW NEELY,
Managers on the Part of the Senate.

STATEMENT

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 4329) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of such District for the fiscal year ending June 30, 1952, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon and recommended in the accompanying conference report as to each of such amendments, namely:

Amendment No. 1: Relating to the federal contribution to the general fund, appropriates $10,400,000 instead of $9,800,000 as proposed by the House, and $11,000,000 as proposed by the Senate.

Amendment No. 2: Relating to the executive office, appropriates $296,575 as proposed by the Senate instead of $293,700 as proposed by the House.

Amendment No. 3: Relating to the office of the corporation counsel, appropriates $341,000 as proposed by the Senate instead of $340,000 as proposed by the House.

Amendment No. 4: Relating to the license bureau, appropriates $78,800 as proposed by the Senate instead of $75,200 as proposed by the House.

Amendment No. 5: Relating to general administration, supervision and instruction, public schools, appropriates $17,315,000 as proposed by the House instead of $17,250,650 as proposed by the Senate, and is to provide for the athletic program as proposed by the House and also provides additional driver-teachers as proposed by the Senate.

Amendment No. 6: Relating to the same subject as amendment numbered 5, allows $3,000 to be available for services of experts and consultants, as proposed by the Senate instead of $2,000 as proposed by the House.

Amendment No. 7: Restores House provision requiring deposit in the Treasury of the United States of collections from school athletic contests.

Amendment No. 8: Relating to vocational education, George-Barden program, appropriates $243,900 as proposed by the Senate instead of $230,000 as proposed by the House.

Amendment No. 9: Relating to operation and maintenance of buildings, grounds and equipment, public schools, appropriates $4,576,500 instead of $4,556,500 as proposed by the House and $4,585,540 as proposed by the Senate.

Amendment No. 10: Reported in disagreement.

Amendment No. 11: Relating to capital outlay, public schools, appropriates $7,027,350 as proposed by the Senate instead of $7,071,350 as proposed by the House.

Amendment No. 12: Reported in disagreement.

Amendment No. 13: Relating to the metropolitan police, appropriates $9,390,000 instead of $9,290,000 as proposed by the House and $9,534,000 as proposed by the Senate.

Amendment No. 14: Relating to the metropolitan police, provides payment from the highway fund in the sum of $1,180,000 instead of $1,140,000 as proposed by the House and $1,207,120 as proposed by the Senate.

Amendment No. 15: Relating to the fire department, appropriates $4,695,000 as proposed by the Senate instead of $4,681,000 as proposed by the House.

Amendment No. 16: Relating to the District of Columbia courts, appropriates $1,100,300 as proposed by the House instead of $1,103,750 as proposed by the Senate.

Amendment No. 17: Relating to general administration, health department, places limitation on annual basis as proposed by the Senate instead of monthly basis as proposed by the House.

Amendment No. 18: Relating to general administration, health department, appropriates $2,681,500 instead of $2,661,500 as proposed by the House and $2,705,500 as proposed by the Senate.

Amendment No. 19: Relating to Glenn Dale Tuberculosis Sanatorium, appropriates $2,286,000 as proposed by the Senate instead of $2,273,500 as proposed by the House.

Amendment No. 20: Relating to operating expenses, Gallinger Municipal Hospital and the Tuberculosis Hospital, appropriates $4,950,000 instead of $4,925,000 as proposed by the House and $5,025,000 as proposed by the Senate.

Amendment No. 21: Reported in disagreement.

Amendment No. 22: Relating to medical charities, appropriates $600,000 as proposed by the Senate instead of $500,000 as proposed by the House.

Amendment No. 23: Relating to operating expense, protective institutions, appropriates $2,943,000 as proposed by the Senate instead of $2,923,000 as proposed by the House.

Amendment No. 24: Relating to Department of Vehicles and Traffic, appropriates $1,250,000 as proposed by the Senate instead of $1,242,000 as proposed by the House.

Amendment No. 25: Reported in disagreement.

Amendment No. 26: Reported in disagreement.

Amendment No. 27: Relating to National Capital Parks, appropriates $1,893,900 as proposed by the Senate instead of $1,881,000 as proposed by the House.

Amendment No. 28: Reported in disagreement.

AMENDMENTS REPORTED IN DISAGREEMENT

The following amendments are reported in disagreement:

Amendment No. 10: Proposed construction on elementary school in the vicinity of River Terrace, Northeast. The managers on the part of the House will move to recede and concur.

Amendment No. 12: Amends reference to elementary school in the vicinity of River Terrace, Northeast. The managers on the part of the House will move to recede and concur.

Amendment No. 21: Relating to capital outlay, Gallinger Municipal Hospital, continues available unobligated balance of certain funds previously appropriated. The managers on the part of the House will move to recede and concur.

Amendment No. 25: Relating to capital outlay, sewer division, continues available unobligated balance of certain funds previously appropriated. The managers on the part of the House will move to recede and concur.

Amendment No. 26: Relating to operating expenses, Washington Aqueduct, provides funds and language to authorize the fluoridation of water. The managers on the part of the House will move to recede and concur.

Amendment No. 28: Relating to general provisions, provides that the Budget Officer of the District of Columbia shall be classified in grade GS–16. The managers on the part of the House will move to recede and concur.

JOE B. BATES,
SIDNEY R. YATES,
FOSTER FURCOLO,
CLARENCE CANNON,
LOWELL STOCKMAN,
EARL WILSON,
Managers on the Part of the House.

Mr. H. CARL ANDERSEN. Mr. Speaker, will the gentleman yield?

Mr. BATES of Kentucky. I yield to the gentleman from Minnesota.

Mr. H. CARL ANDERSEN. It is my understanding that the gentleman from Kentucky [Mr. BATES], regardless of the fact that he opposed by original amendment reducing the Federal contribution by $1,200,000 when that proposal was under consideration in the House, nevertheless did insist on the position of the House in conference. From that insistence I understand a compromise has been reached effecting a reduction of $600,000 in the Federal contribution.

Mr. BATES of Kentucky. The gentleman is correct.

Mr. H. CARL ANDERSEN. My sole purpose in rising was to compliment the gentleman from Kentucky and the other House conferees for seeing to it that the wishes of the House, as expressed by my amendment, did receive some consideration in conference.

Mr. BATES of Kentucky. I thank the gentleman.

Mr. MILLER of Nebraska. Mr. Speaker, will the gentleman yield?

Mr. BATES of Kentucky. I yield to the gentleman from Nebraska.

Mr. MILLER of Nebraska. I was interested in the fluoridation of water. I understand that by amendment No. 26 there is to be some $150,000 earmarked for the fluoridation of water.

Mr. BATES of Kentucky. That is correct.

Mr. MILLER of Nebraska. I think that is a wise decision, because while the results may not show up for several years, certainly the fluoridation of water, to cut down decay of teeth in children particularly, is a step in the right direction. I appreciate the committee including that.

I introduced a bill in the Committee on the District of Columbia on which I hope to have a hearing this week. It may not be necessary if this item stays in.

Mr. BATES of Kentucky. The District Commissioners were not in position to discuss that with us in committee, but we looked it over and discussed it very freely in conference.

Mr. MILLER of Nebraska. Mr. Speaker, I wish to ask the chairman one of two questions. In looking over the bill, it appears that there is quite a little legislation on an appropriation bill for which no authority has been provided. Did the gentleman run into any difficulty about that in the other body? Or was that put in in the other body?

Mr. BATES of Kentucky. Some of it was put in over here and some in the other body.

Mr. MILLER of Nebraska. I hope the two committees, the District Committee of the House and of the Senate will be more active in providing authorization for legislation so that the Appropriations Committee will not have to put so much legislation in the appropriation bill.

Mr. BATES of Kentucky. I agree with the gentleman. We hope the legislative committee of the House will act in these matters.

Mr. Speaker, I do not believe that there is any need for me to take more than a few minutes of the time of the House to explain the conference recommendations, since the bill is very little changed from its form when it passed the House just a short time ago.

The bill as it passed the House would have provided appropriations totaling $137,776,375. The Senate received a supplemental budget request, subsequent to passage of the bill by the House, which totaled $73,500, and the District requested restoration of $1,829,220 of the reductions made by the House. Of this total additional request of $1,902,720 the Senate bill provided a net increase of only $630,915. The conference committee has agreed on a net reduction below the Senate bill of $191,140 and an increase above the House bill of $439,775, an increase of approximately three-tenths of 1 percent.

I will briefly explain the significant increases. The Senate heard considerable testimony on the fluoridation of the water supply, a subject which the Commissioners were not prepared to discuss at the time your appropriations committee held its hearings. After a review of the testimony presented to the other body and a discussion of it during the conference, your conferees were convinced that this is a very worth-while project, and we agreed to the inclusion of $130,000 in the bill for this purpose.

The Senate bill included $244,000 more for the Metropolitan Police than was included in the House bill. This increase was to cover the additional costs of the 5-day week law that Congress passed some months ago. The very substantial cut of $994,000 that your committee made in this item was partially based on the fact that we felt sure that recruitment problems would make it impossible for the department to effectively and efficiently utilize these funds. The recent slight lowering of the strict physical requirements has lessened to some degree their recruitment difficulties. The House conferees, however, felt that the additional $244,000 was too great an amount and agreed to a figure $100,000 above the House bill.

The House bill included $500,000 for the medical-charities item, which provides care for indigents in the nine private hospitals under contract with the District. The Senate bill increased this by $100,000 to $600,000. The conference committee agreed to the Senate amount, which is still $35,000 less than the amount appropriated for this purpose for 1951.

The remaining increase of $109,775 above the House bill is made up of many small items, none of which, I believe, are controversial.

It will be recalled that your committee brought on this floor a bill which called for a Federal contribution of $12,000,000—the amount authorized by substantive law. It will also be recalled that, after stanch support of this amount by every member of the District of Columbia Subcommittee on both the majority and minority side, the House reduced this by $1,200,000 by a vote of 56 to 41. In view of this directive your conferees attempted to secure conference agreement to the amount of $10,800,000, but failing in this we sought the best compromise possible and agreed to a 50–50 split, in other words $11,400,000 to be divided $10,400,000 for the general fund and $1,000,000 to the water fund.

Mr. Speaker, I do not believe that there are any other items of sufficient importance for me to take additional time of the House in describing.

The SPEAKER. The question is on agreeing to the conference report.

The conference report was agreed to.

The SPEAKER. The Clerk will report the first amendment in disagreement.

Mr. BATES of Kentucky. Mr. Speaker, I ask unanimous consent that the six amendments in disagreement may be considered en bloc, Senate amendments Nos. 10, 12, 21, 25, 26, and 28.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

The Clerk read as follows:

Senate amendment No. 10: Page 9, line 20, insert "Elementary school in the vicinity of River Terrace, Northeast."

Senate amendment No. 12: Page 10, line 15, insert "Elementary school in the vicinity of River Terrace, Northeast."

Senate amendment No. 21: Page 18, line 18, insert "The unobligated balance of the appropriation of $382,909 for furnishing and equipping the combination pediatrics and crippled children's building at Gallinger Hospital, contained in the District of Columbia Appropriation Act, 1950, shall remain available until June 30, 1952."

Senate amendment No. 25: Page 35, line 16, insert "and not to exceed $162,000 of the appropriation for 'Capital outlay, Sewer Division,' contained in the District of Columbia Appropriation Act, 1948, for increasing capacity of the sewage treatment plant, including additional sludge digestion tanks and additional sedimentation tanks, and not to exceed $12,000 of the appropriation for 'Capital outlay, Sewer Division,' contained in the District of Columbia Appropriation Act, 1947, for preparation of plans and specifications for constructing chemical treatment, sludge drying, and incineration facilities at the sewage treatment plant, are continued available for expenditure until June 30, 1952."

Senate amendment No. 26: Page 37, line 23, strike out "$1,813,000" and insert "and fluoridation of water, $1,943,000."

Senate amendment No. 28: Page 46, line 17, insert "including under the Executive Office the Budget Officer in GS–16."

Mr. BATES of Kentucky. Mr. Speaker, I move that the House recede from its disagreement to the amendments of the Senate numbered 10, 12, 21, 25, 26, and 28, and concur therein.

The motion was agreed to.

By unanimous consent, a motion to reconsider the votes by which action was taken on the several motions was laid on the table.

CALL OF THE HOUSE

Mr. HOFFMAN of Michigan. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. PRIEST. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 145]

Armstrong	Engle	Pickett
Bakewell	Fine	Poage
Baring	Fisher	Poulson
Barrett	Flood	Powell
Bates, Mass.	Fogarty	Price
Blatnik	Gillette	Rabaut
Bosone	Golden	Radwan
Bow	Grant	Redden
Boykin	Green	Regan
Breen	Hall, Edwin Arthur	Richards
Brehm	Hand	Rivers
Busbey	Holifield	Rogers, Colo.
Case	Irving	Roosevelt
Celler	Johnson	Saylor
Chatham	Kearney	Scott, Hardie
Chelf	Kennedy	Scott, Hugh D., Jr.
Chenoweth	Kilburn	Scudder
Cooley	Kilday	Shelley
Coudert	King	Short
Curtis, Nebr.	Lyle	Sikes
Davis, Tenn.	McDonough	Smith, Kans.
Dawson	McGregor	Taber
Dingell	Mack, Ill.	Thomas
Dollinger	Miller, Calif.	Watts
Donovan	Morgan	Whitaker
Durham	Morton	Whitten
Eberharter	Murray, Wis.	Yates
Ellsworth	Perkins	
Elston		

The SPEAKER. On this roll call 349 Members have answered to their names, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

COMMITTEE ON BANKING AND CURRENCY

Mr. SPENCE. Mr. Speaker, I ask unanimous consent that the Committee on Banking and Currency may have until midnight tonight to file reports on a resolution and a bill, Senate Joint Resolution 78 and H. R. 3176.

The SPEAKER. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

AMENDING SECTION 503 (B) OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

Mr. WILLIAMS of Mississippi. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H. R. 3298) to amend section 503 (b) of the Federal Food, Drug, and Cosmetic Act.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H. R. 3298, with Mr. COLMER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on yesterday the gentleman from Ohio [Mr. CROSSER] had 41 minutes remaining and the gentleman from New Jersey [Mr. WOLVERTON] had 58 minutes remaining.

The gentleman from New Jersey is recognized.

Mr. WOLVERTON. Mr. Chairman, I yield myself 21 minutes.

Mr. Chairman, the bill which is before the House for consideration at this time is one that has been given careful consideration by the Committee on Interstate and Foreign Commerce. I do not know of any legislation which the committee has had before it at any time that has been given more careful consideration than the present measure.

There may be some differences of opinion with respect to some features of the bill, but I think there is no doubt that there is unanimity of agreement so far as the objectives of the bill are concerned. I realize from the short debate yesterday and the questions asked during that debate, that there are many questions in the minds of individual members with respect to the measure. I am inclined to believe that many of the questions are due in some measure at least to the receipt of telegrams from interested parties who I am fearful do not in each instance entirely understand the provisions of the bill as reported to the House. The bill reported to the House has made many changes in the bill as originally introduced. I will depart from the usual method of presenting an argument to the House.

I will present my views and my interpretations of this bill by questions and answers in which I will endeavor to give information that will answer the questions that I think are uppermost in the minds of those who are anxious to do the right thing with respect to this legislation. I think I can best do it by this form of presentation. I ask that the Members give careful attention as I now proceed to give the questions and answers to which I have referred.

QUESTIONS AND ANSWERS ON H. R. 3298

First. Question: Why is it necessary for the Congress to consider at this time the bill H. R. 3298?

Answer: Because there has been constantly increasing confusion under the present provisions of the Federal Food, Drug, and Cosmetic Act of 1938 as to which drugs may be sold only on prescription and which drugs may be sold freely over the counter.

Second. Question: What causes this confusion?

Answer: The present provisions of the Federal Food, Drug, and Cosmetic Act of 1938 and the regulations issued thereunder with respect to prescription drugs and over-the-counter drugs are so general that drug manufacturers have differed greatly in the interpretation of these provisions and regulations, and, therefore, in many cases one and the same drug is labeled differently by different manufacturers for prescription sale and for over-the-counter sale.

Third. Question: What is the purpose of H. R. 3298?

Answer: The purpose of H. R. 3298 is to protect the public in the use of potent medicines which should be sold on prescription and to bring about uniformity in the labeling of drugs as prescription drugs and over-the-counter drugs.

Fourth. Question: What is meant by a prescription drug?

Answer: A prescription drug is a drug which may be sold by the druggist only on prescription and which must be labeled with a caution legend that it may be sold only on prescription.

Fifth. Question: What is meant by an over-the-counter drug?

Answer: An over-the-counter drug is a drug which may be sold freely over the counter and which must be labeled with adequate directions for use so that it may be used for self-medication.

Sixth. Question: Is a distinction between prescription drugs and over-the-counter drugs the only problem which is dealt with in H. R. 3298?

Answer: No, it is not. Other provisions in H. R. 3298 deal with telephone prescriptions and the refilling of prescriptions.

Seventh. Question: What does the Federal Food, Drug, and Cosmetic Act of 1938 provide at present with respect to telephone prescriptions?

Answer: The Federal Food, Drug, and Cosmetic Act of 1938 does not permit telephone prescriptions.

Eighth. Question: Should telephone prescriptions be permitted even in the case of potent and dangerous drugs?

Answer: Yes; they should be permitted because the use of the telephone in prescribing medicine is a great convenience both to the doctors and the patients and in some areas of this country telephone prescriptions are absolutely essential to the public health.

Ninth. Question: What safeguards are provided in H. R. 3298 with respect to telephone prescriptions?

Answer: Telephone prescriptions for drugs that may be sold only on prescriptions must be reduced to writing promptly by the pharmacist and must be filled by him.

Tenth. Question: What does H. R. 3298 provide with respect to the refilling of prescriptions?

Answer: H. R. 3298 provides that prescriptions for drugs that may be sold on prescriptions only may not be refilled unless the prescription itself states that it is refillable. A prescription which calls for dispensing of drugs that may be sold freely over the counter may be refilled freely even in the absence of a statement by the prescribing physician that the prescription is refillable.

Eleventh. Question: Why is a distinction made with respect to the refilling of prescriptions between drugs which may be sold only on prescription and drugs which may be sold freely over the counter?

Answer: A distinction is made because in the case of drugs that may be sold freely over the counter it is usually safe for the patient to take the medicine called for in the prescription without again consulting a physician.

Twelfth. Question: Does this mean that in the case of drugs which may be sold only on prescription refilling of prescriptions is unlawful unless specifically authorized by a physician?

Answer: Yes; it does mean that in the case of drugs that may be sold only on prescription a physician will have to authorize specifically the refilling of such prescription.

Thirteenth. Question: Does this mean additional cost to the patient because he will have to get a new prescription from the physician?

Answer: Yes; it may mean that in those cases where the patient cannot safely determine by himself whether he should continue to take the drug originally prescribed by a physician.

Fourteenth. Question: What does the present law provide with respect to the refilling of prescriptions?

Answer: The present law generally prohibits the refilling of all prescriptions unless the prescribing physician authorizes specifically such refilling. The present law makes no distinction between prescriptions for drugs that may be sold only on prescription and drugs which may be sold freely over the counter.

Fifteenth. Question: Does that mean that under the present law a prescription for aspirin may not legally be refilled?

Answer: It means just that and it is the purpose of the bill to authorize the refilling of prescriptions for over-the-counter drugs like aspirin and other commonly used home remedies.

Sixteenth. Question: Has that always been the law or has that state of affairs been brought about by Dr. Dunbar's speech in 1948?

Answer: That has been the state of the law since 1938 and Dr. Dunbar's speech merely called attention to the fact that the Food and Drug Administration in not prosecuting cases involving the unauthorized refilling of prescriptions merely winked at the law.

Seventeenth. Question: Under the bill who would determine which drugs may be sold only on prescription and which drugs may be sold freely over the counter?

Answer: Under the bill the Federal Security Administrator would make that determination on the basis of a statutory standard written into the bill defining dangerous drugs and on the basis of generally prevailing expert opinions with respect to the safety of such drugs.

Eighteenth. Question: Under the present law who determines what is a prescription drug and an over-the-counter drug?

Answer: Under the present law the Food and Drug Administration brings a suit for misbranding and in the course of such suit the court determines whether a particular drug is a prescription drug or an over-the-counter drug.

Nineteenth. Question: Why is it desirable to change the law in this respect and to give the Federal Security Administrator power to determine which are prescription drugs and which are over-the-counter drugs?

Answer: There are approximately 30,000 drug items which could require 30,000 lawsuits to determine under the present law which are prescription drugs and which are over-the-counter drugs.

Twentieth. Question: How is the power of the Administrator circumscribed and how are the rights of interested parties safeguarded?

Answer: The Administrator is called upon to make his determination in accordance with a specific statutory standard defining dangerous drugs, and his determination must be based upon generally prevailing opinions of experts with respect to the safety of such drugs. If any interested party opposes a proposed classification of a drug or seeks a change in an existing classification, hearings must be held in the course of which qualified experts would be called upon to testify. The determination of the Administrator is reviewable in the circuit court of appeals.

Twenty-first. Question: Is the grant of this power unusual?

Answer: No; the grant of this power is not unusual at all. There are, under the bill, three classes of prescription drugs; first, habit-forming drugs; second, dangerous drugs; and, third, new drugs. In the case of the first and the last classes, the Administrator already has the power that the bill would give him with respect to the second class of drugs.

Twenty-second. Question: Must this power be given to the Administrator or is there another way of creating uniformity?

Answer: The committee has studied carefully all the alternatives that have been proposed and reluctantly has come to the conclusion that there is no way of bringing about uniformity without somebody making the decision as to which drugs are prescription drugs and which are over-the-counter drugs.

Twenty-third. Question: Who favors the grant of this power to the Administrator?

Answer: The National Association of Retail Druggists favor the grant of this power not because they merely want the Administrator to have additional power, but because they seek uniformity in the labeling of drugs and no other way is open by which this objective can be achieved.

Twenty-fourth. Question: What is the National Association of Retail Druggists?

Answer: It is an association of approximately 35,000 drug-store owners.

Twenty-fifth. Question: Who opposes the legislation?

Answer. Nobody opposes the legislation in its entirety. Everybody is agreed that the provisions of the bill with respect to telephone prescriptions and with respect to the refilling of prescriptions are necessary and desirable changes in the present act. Everybody further contends, publicly at least, that uniformity is desirable. However, several organizations of manufacturers and pharmacists have opposed, on principle, the grant of additional authority to the Administrator to secure uniformity.

Twenty-sixth. Question: Have alternative proposals been suggested by the opposing groups in order to secure the desired uniformity?

Answer: The answer, in effect, is no. because the proposal which has been made by the opposing organizations involves retaining the present law which possibly involves 30,000 lawsuits before uniformity can be achieved.

Twenty-seventh. Question: Could uniformity be secured without legislation purely on the basis of an understanding among manufacturers?

Answer: Theoretically, the existence of this possibility cannot be denied. In actual practice, however, all attempts to secure such understanding have failed.

Twenty-eighth. Question: What is the principal reason for the failure of such informal understanding?

Answer: The principal reason for this failure is that quite a number of manufacturers actually are opposed to uniformity and prefer the continuance of the present labeling which restricts many safe drugs to prescription sales.

Twenty-ninth. Question: Why should some manufacturers desire to restrict drugs to sale on prescription only although they could safely be sold over the counter without a prescription?

Answer: Several drug manufacturers have traditionally in their trade catered to physicians and registered pharmacists. Many physicians prefer to buy or promote medicines of firms who sell their drugs in this way.

Thirtieth. Question: Are there any reasons other than the traditional trade relations of particular drug manufacturers?

Answer: Yes; a possible other reason is that by labeling drugs for prescription sale only, such drug manufacturers avoid the responsibility of placing on such drugs correct directions for use.

Thirty-first. Question: Is the general public benefited by the requirement that all safe drugs bear directions for use?

Answer: Yes; the public is benefited by this requirement because self-medication is possible only if adequate and correct directions for use are set forth on the labels of safe drugs.

Thirty-second question: Are the provisions of H. R. 3298 burdensome for the retail druggist as is claimed by some opposing the bill? More particularly, must the druggists consult at all times the Federal Register in order to escape responsibility under the Food and Drug Act?

Answer: H. R. 3298 greatly improves the position of the druggists in that it requires the clear-cut labeling of all drugs, thus, in practice, enabling the druggists who buy from reputable concerns to rely on the manufacturers' labels. In those exceptional cases where a drug manufacturer disregards the labeling requirements of the bill and place an incorrect label on a drug, the druggist theoretically is responsibile under the law. However, he can protect himself by checking the Administrator's list and, furthermore, enforcement of the law is traditionally directed against the source of the evil, namely, the manufacturer who falsely labeled a drug.

Thirty-third question: Does this bill advance socialized medicine?

Answer: It certainly does not. The doctor's right to prescribe any medicine he sees fit remains completely unaffected by the bill. Instead of furthering socialized medicine, the bill actually eliminates some of the present restrictive provisions of the law.

Thirty-fourth question: Does the bill restrict the public's choice of remedies?

Answer: No. It guarantees that all drugs that can be safely used by a layman shall be labeled with complete directions which the purchaser can follow without medical advice. It does prevent the sale without prescription of drugs that would harm the purchaser if he took them without professional advice. It is distinctly advantageous to the public.

Thirty-fifth question: Does the bill authorize the Administrator to place drugs on the prescription list by relying on the opinions of experts employed in the agency?

Answer: No. The Administrator must base his action only on opinions generally held by experts qualified by scientific training and experience to evaluate the safety of drugs.

Thirty-sixth question: Does this bill establish a licensing control system over all drug manufacturers?

Answer: Certainly not. The bill has no provision whatever that directly or indirectly mentions licensing. The bill simply authorizes the Administrator to say, after public proceedings, that a particular drug must thereafter be sold on prescription. This enables the manufacturer to know before he violates the law that his drug must be sold on prescription only.

Thirty-seventh question: Does this bill make it possible for the Administrator to put such household remedies, as bromo-seltzer, milk of magnesia, and citra carbonate on prescription?

Answer: Of course not. It requires the Administrator to respect the opinions generally held that these articles are safe for self-medication.

Thirty-eighth question: What is the position of the doctors?

Answer: Representatives of the American Medical Association were present at the committee hearings but refused to testify. Some members of the association, however, have expressed their disapproval of the bill because it vests additional powers in Mr. Ewing whom they distrust. In my opinion this is distinctly unfounded in this particular instance.

Thirty-ninth question: Does this bill authorize grocery stores, supermarkets, and house-to-house vendors to sell drugs?

Answer: This bill is not concerned even remotely with that problem. It is exclusively a matter of State law whether drugs that can be dispensed without a prescription must or must not be sold in drug stores.

This bill in my opinion is clearly in the public interest. It clarifies the law with respect to matters that have brought great concern to practicing druggists. At the same time it makes certain that the public welfare is fully protected. The bill is distinctly beneficial to the general public. It deserves the support of the House.

Mr. CROSSER. Mr. Chairman, I yield 15 minutes to the gentleman from Mississippi [Mr. WILLIAMS].

Mr. WILLIAMS of Mississippi. Mr. Chairman, I wish it were possible for my good friend the gentleman from North Carolina [Mr. DURHAM] to be here today to present the case for this bill. As all of you know, he has been fighting to get the retail druggists out of the dilemma in which they found themselves after Dr. Dunbar's speech to the NARD convention in 1948.

This is the first time we have been able to get his legislation to the floor. The gentleman from North Carolina [Mr. DURHAM], as you know, is in the hospital now, and it is impossible for him to be here. If he were here, I am sure this bill would meet with little, if any, opposition.

As a member of the Committee on Interstate and Foreign Commerce, which considered this legislation, I am one of those who feels he knows a little something about the bill. We have, in committee, gone over all of the objections which have been raised on the floor. There is nothing new in the arguments against the administrative list provided for in this bill. They have all been argued back and forth and ironed out in committee. When the bill was finally put to a vote by the membership of the committee, it was reported favorably to the floor of the House by a vote of 19 to 4.

As you know, the only controversial item in the bill has to do with subparagraph (B) of paragraph (1). That subparagraph, as you know, provides that the Administrator shall, after hearings, and so forth, provide an administrative list of drugs which shall be restricted to sale under prescriptions. That is the bone of contention in this bill.

The amendment which will be offered by the gentleman from Minnesota to strike this language from the bill and substitute therefor what they consider a definitive standard by which the manufacturers may determine which drugs are prescription drugs has been considered at length by the committee. It was voted down by an overwhelming vote, and this language giving the Administrator this responsibility was written in the bill in its stead.

The arguments against putting the administrative list provision in the bill are simply the same old arguments we heard on the floor of the House from time to time when Federal Security matters are considered. I must confess I have at times advanced the same arguments to accomplish my purposes.

The argument against giving any additional authority to Oscar Ewing is powerful and has a tremendous political appeal because of his apparent unpopularity. Do you not know that if this bill gave any additional authority—arbitrary authority—to Mr. Ewing that I would not be here fighting for its passage, and to include the section providing for the establishment of this administrative list? Knowing my record here, do you think I would be fighting to give one of Mr. Truman's Fair Deal bureaucrats arbitrary authority which he could abuse? Do you think I would be here trying to promote socialized medicine? I suspect that my record of fighting Mr. Ewing and his socialistic ideas is just about as consistent as that of the gentleman from Minnesota.

Do you think if there was danger of giving Mr. Ewing dictatorial powers in this bill that the gentleman from Arkansas [Mr. HARRIS] would be here fighting in support of it? Do you think that

the gentleman from Florida [Mr. ROGERS] would be giving the bill his wholehearted support? Do you think the gentleman from Alabama [Mr. ROBERTS], and the gentleman from Texas [Mr. THORNBERRY], all conservatives and all feeling generally as I do about government—and Mr. Ewing's socialistic philosophies—would be supporting this bill? Do not you know that there is no danger of Mr. Ewing's becoming a medical dictator through this bill? We would give him this authority, and then tie his hands with the Administrative Procedure Act so he could not abuse it.

Mr. SABATH. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Mississippi. I yield to the gentleman from Illinois.

Mr. SABATH. This will not be administered by any bureaucrat. It will be administered by a man who has been in civil service for many years. As to the gentlemen who are supporting this bill, I am pleased that they are doing so. I hope that in the future they will continue to support other administration bills as they are doing this time.

Mr. WILLIAMS of Mississippi. I thank you for your help. But I am not going to argue with you whether Mr. Ewing is a bureaucrat or not. Frankly, I would concede that point. This bill gives Mr. Ewing certain responsibilities in subparagraph (B) of paragraph (1), and then ties his hands so that he cannot abuse it. Later on in the bill this is provided through court appeals granted to the objectors.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Mississippi. I yield to the gentleman from Arkansas.

Mr. HARRIS. I know the gentleman has a valuable statement to make, and I do not want to take up his time. I hope that every Member will listen attentively to a man who has such a background, raised in a drug store, and is therefore familiar with the problems involved here. With reference to the statements of the distinguished gentleman from Illinois [Mr. SABATH], I should like to say that this is not necessarily an administration bill. It was presented to our committee by the gentleman from North Carolina [Mr. DURHAM] and it is a bill for and in behalf of the people of this country.

Mr. SABATH. To that extent I agree with the gentleman.

Mr. HARRIS. As long as such legislation is in the interest of the people of the country, I can assure you that the Members the gentleman refers to will still be supporting it.

Mr. PASSMAN. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Mississippi. I yield to the gentleman from Louisiana.

Mr. PASSMAN. Under the bill the Federal Administrator can make a determination on the basis of statutory standards and define dangerous drugs, on the basis of generally prevailing administrative opinion. Is the Administrator a doctor or a druggist himself?

Mr. WILLIAMS of Mississippi. He is not; he is the head of the Federal Security Agency.

Mr. PASSMAN. He would not make decisions himself? He would have to seek the advice of others, other than his own decisions?

Mr. WILLIAMS of Mississippi. This authority had to be placed in somebody. Therefore, it was placed in the head of the Agency rather than in one of his subordinates in the food and drug section of his Agency.

Mr. FORD. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Mississippi. I yield to the gentleman from Michigan.

Mr. FORD. I just asked a member of the committee as to whether or not the Federal Security Agency could handle this new assignment if it is given to them, with their existing personnel, or whether they are going to have to come before the House Committee on Appropriations and request additional personnel to handle the new duties, if this bill is approved. Can the gentleman tell me whether or not that was brought out in the hearings?

Mr. WILLIAMS of Mississippi. No. I cannot say, of my own knowledge. I assume they will probably act like nearly every other agency, they will probably come back and ask for some more funds. But I am convinced it could be handled within the present framework of the Agency.

Mr. FORD. That would be an exception to previous experiences Congress has had with reference to new duties being put on Government agencies?

Mr. WILLIAMS of Mississippi. Well, the gentleman knows the habits of these agencies when it comes to asking for their funds. They look for excuses to justify additional funds. But, frankly, this could be handled within the framework of the Agency.

I hope you will now let me continue for a moment without interruption. The commitee, in attempting to place responsibility for determining what drugs are prescription drugs and what drugs are safe to be sold over the counter, considered three alternatives.

First, the committee considered the proposition of writing into the bill a legislative list, naming the drugs which could be used as examples in determining which drugs are prescription drugs.

Of course that is legislatively impossible; we cannot handle legislatively something that should and could only be properly handled administratively, and that idea was set aside.

The second alternative that was presented to the committee was the proposition of including in the bill a legislative standard to be followed by the manufacturers in determining what legend to put on their drug. That is the present law and has caused the presently existing confusion. I see no way of enforcing that. That was considered long and it was considered tediously by the committee, and that, I understand, is what is going to be offered as a substitute for the language of this bill when it is read under the 5-minute rule.

Had the committee written that language into the bill and attempted to provide a broad definition of what drugs should be prescription drugs and what drugs could be sold over the counter, the individual retail pharmacist would be left in exactly the same position he is in now. That is, whether to believe the legend that was written on the drug by the manufacturer that it could be dispensed only under the supervision of a physician, or whether he could freely sell the drug over the counter.

Let us take the case of precipitated chalk that was brought before the committee. One manufacturer put on precipitated chalk the prescription label saying that it cannot be sold except under the supervision of a physician or on the written prescription of a physician. Another manufacturer puts up the identical drug, the same chemical makeup—an innocuous drug, incidentally—puts on the label, not the prescription legend, but the dosage: "One teaspoonful in a glass of water every 2 hours as an antiacid."

What is a druggist going to do when he gets a request from a customer to sell him over the counter an order of precipitated chalk? Does he know whether he can legally sell it? Or does he know whether he is violating the law when he sells it? The purpose of this bill is to give that druggist a definite standard to follow. If this bill is passed within 6 months all the druggist will have to do to be sure whether he is violating the law or not is to look at the legend written on the drug before he dispenses it.

Mr. CROSSER. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Mississippi. I yield.

Mr. CROSSER. As distinguished from the present situation where he has to invite prosecution to find out.

Mr. WILLIAMS of Mississippi. You are right. The present situation is one of confusion, but to adopt the definitive standard amendment would merely place a congressional stamp of approval on the present confusion.

Mr. BATTLE. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Mississippi. I yield.

Mr. BATTLE I want to say that I have had a great deal of correspondence from my retail druggists on this very point and I think they are due some relief. I want to congratulate the committee for bringing out this legislation to clarify these points. I congratulate the gentleman on his statement.

Mr. WILLIAMS of Mississippi. I thank the gentleman.

Mr. BENNETT of Michigan. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Mississippi. Not now.

Mr. BENNETT of Michigan. If the gentleman will yield I just want to clear up a point.

Mr. WILLIAMS of Mississippi. We can argue that point later. I know what the gentleman is going to say; we have discussed that before. The gentleman can take it up when he makes his statement on the floor and I promise him that I will not interrupt his reply.

Mr. Chairman, during the last 2 or 3 weeks when certain drug manufacturers found out that this bill was coming up for consideration they began to spread misleading information all

over the country about the bill. They have told the people that dispense home remedies, such as Watkins and Raleigh products, that they would be put out of business. They have even been telling the little country grocers that they were not even going to be able to sell vanilla extract; that if this bill passed, the only way a person could get vanilla extract would be on the prescription of a physician. Now that, of course, is untrue. It is grossly misleading, it is a fabrication out of the whole cloth, and it is intended to stir up enough grass-roots opposition to this bill, based on a misunderstanding of it, to persuade the membership of this House to refuse this relief to the retail druggists of America.

The CHAIRMAN. The time of the gentleman from Mississippi has expired.

Mr. CROSSER. Mr. Chairman, I yield the gentleman two additional minutes.

Mr WILLIAMS of Mississippi Mr. Chairman, let us see who is supporting this bill. Among the organizations supporting this bill is the National Association of Retail Druggists, which has a membership of 35,000. Practically every drug store owner in the United States belongs to the NARD. This is the real practical working organization of the American retail drug stores. With 35,000 members, that organization is seeking relief for its members.

Who is opposed to this bill? The American Drug Manufacturers Association, with a membership of 67 firms. Are they interested in the welfare of the retail druggist when it conflicts with their own? Self-preservation is still the first law of nature.

Then another is the American Pharmaceutical Manufacturers Associaion that has a membership including 150 firms. There is the Proprietary Association, composed essentially of manufacturers of what they call packaged medicines or patent medicines. These are the products sold to the general public with representations as to the effects they will produce rather than with emphasis on the ingredients of which they are composed, such as Hadacol for instance.

Then there is the American Pharmaceutical Association you have been so worried about because you have been getting letters and telegrams from them in opposition to this bill. Who is the American Pharmaceutical Association? Does it claim the right to speak for the American retail druggists as opposed to the National Association of Retail Druggists?

The American Pharmaceutical Association represents primarily the scientific side of pharmacy. It represents school teachers, research men, and others who are connected with drug firms, and others interested in the sale of drugs—but not necessarily retail drug stores—and it only has 14,000 members in the organization.

There is the NARD, made up of the retail drug store owners of this country, which is virtually unanimous in support of this bill.

You have 35,000 professional men, practical men, on one side through the NARD. Take a combination of all the rest of them and you do not have over half as many people as you do in the NARD. I am convinced that the retail druggists want and need this bill.

The CHAIRMAN. The time of the gentleman from Mississippi has again expired.

Mr. WOLVERTON. Mr. Chairman, I yield 7 minutes to the gentleman from Indiana [Mr. BEAMER].

Mr. BEAMER. Mr. Chairman, on Monday, in the debate on H. R. 4484 and on many previous occasions many Members of this House have pronounced their affirmation in the sovereignty of the States and in opposition to increased Federal controls. The same principle is involved in a portion of this measure, H. R. 3298. The administrative enmeshment and the grant of great power which H. R. 3298 provides are not necessary to the avowed purposes of the bill.

The principal intent of this bill is to correct and improve the refill provisions of the present pure food and drug law. This result, we feel, has been accomplished in a reasonably good manner in H. R. 3298. However, attention must be called to the section that gives increased authority to the Federal Security Administrator.

Another interesting and important process in legislative procedure is deserving of attention. When the Interstate and Foreign Commerce Committee voted in executive session on this bill several of us wanted this one feature corrected and, for that reason, hoped to have the committee further consider it. Immediately the National Association of Retail Druggists wrote the members of their association in my district, and, I presume, in certain other districts. As a result I received letters from 10 druggists, most of whom I know personally, asking me to support H. R. 3298. Accordingly, I sent copies of the bill and also of the committee report to these retail druggists with a request that they study the bill and the committee report. Time has been limited, but, even so, I have received telegrams from 5 of these druggists in which they reverse their original request and ask me to support only the refill provision and oppose the extension of authority.

In addition, I have received some 45 or 50 other telegrams principally from the doctors in one city in my district in which the same sentiment is expressed that the druggists requested after they had learned for themselves the content of this bill.

These druggists and doctors realize—as do you and I—that the old legislative trickery is being employed. Some more of the socialistic schemes are introduced in this manner by incorporating worthwhile legislation which we want to support with objectionable sections which we must oppose. In this dilemma the druggists who really have had an opportunity to know the actual import of this kind of legislation really are saying that they do not want to sell their birthright for a mess of pottage.

As evidence of the attitude of these druggists once they see the entire picture, I wish to include two telegrams that are typical:

ANDERSON, IND., *July 29, 1951.*

JOHN V. BEAMER,
House of Representatives,
Washington, D. C.:

After conscientious reconsideration of H. R. 3298 in its revised form may I ask that you use your influence in writing in improvements whereby physicians may have the right to prescribe medicines orally, and pharmacists may fill prescriptions so received and refill those and any other prescription he may have on file except those covered by the Federal narcotics laws. That physicians may indicate the number of times the pharmacist may refill each prescription, by noting thereon. That you use all the available pressure at your command to defeat any additional moves by the Administrator of the Social Security Administration to increase his controls over the practice of medicine and pharmacy, and if possible to decrease his control over the practice of medicine and pharmacy, and if possible to decrease these bureaucratic controls. After 40 years of the profession of pharmacist my observations are that pharmacy and medicine need less controls and that the majority of these professional men are honest and honorable and are able to police their own professions.

A. L. PAYNTER.

ANDERSON, IND., *July 29, 1951.*

Hon. JOHN V. BEAMER,
House Office Building:

After careful review of H. R. 3298 and majority and minority report I wish to withdraw my approval of original bill.

We believe refill and oral prescription rights absolutely essential to providing customers and doctors with best care and service. Request you support these provisions. Portion of bill giving administration right and power to determine category of drugs and to regulate same should be vigorously opposed. We have too much bureaucracy and control in such departments. It would be almost impossible to keep up with regulations if this were enacted. Please support refill and oral prescription rights but oppose additional restriction and regulation on pharmacists and public as well as additional power for Administrator.

HOWARD GWINN.

I also wish to introduce in the RECORD, 1 telegram from a doctor that expresses the sentiments of the 45 or 50 telegrams that have been received from doctors in my district:

ANDERSON, IND., *July 30, 1951.*

Representative JOHN V. BEAMER,
House Office Building:

Instructed by my committee to express opposition of Madison County Medical Society to H. R. 3298 as written privilege of refill of prescriptions as specified by physicians in use of oral prescriptions essential to save expense and reduce inconvenience to patient and to prevent unnecessary use of physicians' time. We support refill privilege as specified by practitioner for stated number of times and oral prescription when necessary. Remaining portion of bill would compound confusion, increase Federal power and authority over citizens, expand Federal Bureau, lead to increased Federal spending and eventually lead to Government control of medical practice. We request your opposition to giving Administrator more power. If such control is advisable it should be at State level but this is not necessary. We sincerely request you support refill provision and eliminate control or extension of authority of Federal Bureau.

JOHN L. DOENGES, M. D.,
Chairman Committee.

Furthermore, a resolution adopted by the Indiana Pharmaceutical Association in convention in June 1951 is included. This resolution further bears out the same opposition to increased Federal controls:

RESOLUTION OF INDIANA PHARMACEUTICAL ASSOCIATION CONVENTION, JUNE 1951

Whereas there is so much disagreement over the right of the registered pharmacist to refill prescriptions of physicians, dentists, or veterinarians for hypnotic and prescription legend drugs: Therefore be it

Resolved, That the Indiana Pharmaceutical Association in annual convention assembled oppose the extension of Federal control over the relationship between physicians, pharmacists, and patients; and be it further

Resolved, That we recommend that such questions as refills of prescriptions be controlled at the local or State level.

A final and very significantly important letter to be included is the one received from Glenn L. Jenkins, dean of the school of pharmacy, Purdue University, West Lafayette, Ind. Dean Jenkins is recognized as one of the outstanding authorities in his field:

PURDUE UNIVERSITY,
SCHOOL OF PHARMACY,
LaFayette, Ind., July 20, 1951.

Hon. JOHN V. BEAMER,
Congress of the United States,
House of Representatives,
Washington, D. C.

DEAR CONGRESSMAN BEAMER: I am pleased to have your letter of July 11 asking my opinion relative to the Durham-Humphrey bill. In my opinion this bill would take away much of the professional liberty of the pharmacist and would interfere with the relationship between the physician and the pharmacist. Furthermore, the bill gives authority to the Food and Drug Administration to determine when a drug is effective. Broad powers of this kind might very easily interfere with the proper self-medication for minor symptoms and ailments carried on by the people. Consequently, it is my opinion that the Durham-Humphrey bill, H. R. 3298, should not be approved by the Congress of the United States. It is my opinion that the control of relationship between the physician, the pharmacist and the patient should be carried out at the State level. A recommendation to this effect was recently passed by the Indiana State Pharmaceutical Association in its annual convention. Consequently, I hope that you will use your efforts to defeat this new legislation.

Sincerely yours,

GLENN L. JENKINS, *Dean.*

There are several underlying principles involved in this measure. One is the fact that oftentimes blind support is given to legislation by well meaning citizens who have been urged by some association executive to contact their Congressman. Once these same people learn the entire contents of the measure, they then realize that the total sum of the dangers involved more than offset the advantages. This fact has been exemplified in this instance.

The other principle which we must repeat time and time again is the fact that all authority dare not be vested in these bureaus in Washington. Indiana and all of the other States of this great Republic have sovereign rights not only in property but also in individual freedoms. There are those who would destroy this principle by chipping away piece by piece this foundation of individual freedom and individual responsibility.

The Federal Food, Drug and Cosmetic Act has embodied, in the main, this principle and this sound philosophy that has given it strength and respect since the date of its enactment.

With proper amendment to H. R. 3298, this principle can be preserved and, at the same time, the retail druggists, the doctors, and the general public can be given the relief of the prescription refill provisions to which they are entitled.

Mr. SHAFER. Mr. Chairman, I ask unanimous consent to extend my remarks at this point in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. SHAFER. Mr. Chairman, I concur fully with the minority report on H. R. 3298, the bill to amend section 503 (b) of the Federal Food, Drug, and Cosmetic Act.

I see no objections to the provisions of the bill governing the filling or refilling of oral or telephone prescriptions, and restricting the refilling of prescriptions dispensing dangerous drugs, except when authorized orally or in writing by the physician.

But I am completely opposed to the remaining provisions of the bill, which would delegate to the Federal Security Administrator authority to determine the category in which each of some 30,000 drugs would be placed, with respect to their sale by prescription only or over the counter.

I strongly oppose this provision on three counts:

First of all, it represents one more in the long sequence of attempts, successful in all too many instances, to merge the legislative, administrative, and judicial functions of Federal Government in a bureau or agency of the executive department. By conferring authority to determine the category in which each of some 30,000 drugs would be placed, we bestow on FSA, on Mr. Oscar Ewing, and on his successors as Federal Security Administrator, the power to legislate by directive. Obviously, the bill entrusts the administration of the provisions of the bill and the provisions of the Administrator's directives to the FSA. Finally, since the bill provides that "the findings of the Administrator as to the facts, if supported by substantial evidence, shall be conclusive," the Administrator's powers become judicial as well as legislative and administrative. This is the familiar story of concentration of power through the merger of powers and the elimination of checks and balances. I oppose it, in principle and in application.

In the second place, this provision follows the customary pattern of power-grasping bureaucracy, by undertaking detailed supervision instead of providing broad, statutory definitions and regulations directed at the source of the problem. Thus, this provision is not content to set up a statutory standard to guide and direct the determination whether a specific drug is to be restricted to sale on prescription. This provision is not content to impose such a standard at the source of original production and distribution—the drug manufacturer—with final determination left to the courts, in case of alleged violation.

Bureaucracy must always do it the hard way, the complicated way, the red-tape way, the costly way, the burdensome way, the way that provides more Federal jobs, more bureaucratic authority.

The detailed decisions as to the category in which each drug is to be placed would, under this provision, be exercised by the Federal Security Administrator. The directives are to go to each druggist. So are the interminable revisions of regulations. The heavy hand of the bureaucrat is to be laid, in one more respect, on the small-business man.

The reasoning of bureaucracy is inescapable and frustrating—even if illogical; why do the job the simpler way, the less expensive way, the obvious way, even though this simpler way will do the job as well or better? The answer is not difficult: The simpler way involves less power for those whose passion is to govern.

Finally, I oppose this proposal because, as the minority report so ably points out, this provision may easily become the handmaiden to socialized medicine. Mr. Ewing's predictions on the score are too well known to require elaboration. As the minority report points out, the provision involves potentially "in time, an over-all control of the manufacture, distribution, and administration of drugs." Added to that is the fact that this provision gives the Federal Security Administrator opportunity increasingly to restrict over-the-counter sale of drugs, thereby increasing cost of medication and creating one more artificial stimulus to the demand for socialized medicine.

There is a legitimate function, and a legitimate method, of safeguarding the public in the matter of production and dispensing of drugs.

But there are always those—as in this case—who seize upon this legitimate function, and distort the legitimate method, to dispense the deadlier drug of centralized and entrenched bureaucracy.

Mr. WOLVERTON. Mr. Chairman, I yield 12 minutes to the gentleman from Minnesota [Mr. O'HARA].

Mr. O'HARA. Mr. Chairman, I appreciate the sense of confusion as to the effect of the statements which have been made here today in this debate. I wish you could imagine the state of confusion in the committee when the original Humphrey-Durham bill was before us and we found the doctors opposed to it and the retail druggists for it, and the pharmaceutical associations and the various drug manufacturers against it. But that bill was not as bitterly opposed as what finally was the child which was born and which has been presented to the floor, which was a very drastic change in the so-called Durham bill. I have received letters calling attention to the fact that it was the Humphrey-Durham bill, so I assume they were both druggists.

There grew up some controversy yesterday as to what the position of the American Medical Association was on this bill. So that there will be no question about it, I should like to read a telegram I received this morning, which is as follows:

In light of the discussion on the floor on H. R. 3298 as to the position of the American Medical Association, let me advise that on recommendation of the legislative committee, the board of trustees authorized opposition to the bill particularly because of section (B). The board of trustees is the policy-forming body of the American Medical Association when the house of delegates is not in session and has been specially authorized by it to take action on legislative bills. Action on H. R. 3298 was taken by the board at a meeting June 14, 1951, and a copy immediately sent to a member of your committee.

I might say that the hearings on this bill were concluded in the early part of May 1951.

That advice was communicated to my distinguished friend the gentleman from Tennessee [Mr. PRIEST], who read the communication to the committee in executive session. Therefore it cannot be claimed that the committee did not know what the attitude of the American Medical Association was on this bill. I enclose copy of this letter:

AMERICAN MEDICAL ASSOCIATION,
Washington, D. C., June 15, 1951.

Hon. J. PERCY PRIEST,
House of Representatives,
Washington, D. C.

MY DEAR CONGRESSMAN PRIEST: The legislative committee of the American Medical Association has given a lot of thought and study to H. R. 3298, the Durham drug bill.

The provisions of the bill were especially studied by our council on pharmacy and chemistry, and the following statement has been prepared and is being submitted by the board of trustees.

"The committee believes that the objectives sought by this legislation are worthy of support but legislation as proposed at the present time is not necessary or desirable. The committee also believes the control of professional practices should remain in the bodies already set up in States to regulate professional practice. The determination of what should be labeled only for prescription use and what should be made available for nonprescription dispensing should be left to voluntary discussion and effort as now possible under the Federal Food, Drug and Cosmetic Act. The Committee therefore disapproves the legislation."

Respectfully submitted.

JOS. S. LAWRENCE, M. D.,
Director, Washington Office.

Mr. CROSSER. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield.

Mr. CROSSER. The gentleman does not mean to say that the American Medical Association responded to the usual notice which was sent out to the usual organizations and institutions that such notices are sent out to when hearings are going to be held.

Mr. O'HARA. I did not say that, may I say to my Chairman.

Mr. CROSSER. As a matter of fact I personally met the representative here in Washington and asked him whether his organization was going to take a position and I was pretty well informed that it was not going to take a position on this.

Mr. WILLIAMS of Mississippi. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield.

Mr. WILLIAMS of Mississippi. The gentleman knows that we did everything but hogtie the doctors to try to get them down before the committee.

Mr. CROSSER. Absolutely.

Mr. WILLIAMS of Mississippi. And they absolutely refused to take a stand.

Mr. O'HARA. The gentleman knows that some doctor who represents the American Medical Association in Washington cannot speak until the executive board of their body acts on any particular project. Until the bill came out of committee they could not possibly have acted on it and furthermore when the bill was reported out of committee it was completely changed. I say in fairness to the American Medical Association they have been a little slow in reporting their attitude at times and I have been critical of them but in this case I cannot criticize them.

Mr. BROWN of Ohio. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield.

Mr. BROWN of Ohio. I have had the opportunity, of course, to hear a great deal of discussion on this bill before the Committee on Rules. I have received a great many communications from druggists, a few from drug manufacturers, and a large number from doctors, from all over the country concerning this legislation. I have sent copies of the bill and of the committee report to those people who contacted me, especially those in my own district and State. I know that the Ohio State Medical Association, for instance, has gone on record against the provisions in the bill which gives greater power to the Federal Security Administrator. Seemingly the druggists are primarily interested in getting the authority to refill prescriptions so as to follow their age-old custom of handling prescriptions, while the doctors are primarily interested in seeing that no one gets a foot in the door for socialized medicine, and are therefore opposed to the section giving new powers to FSA. The doctors and the medical fraternity, as I understand it, also want the relief the druggists have requested to be granted to them. So it seems to me we can work out a suitable arrangement to satisfy both doctors and druggists by amending this bill, so as to give to the druggists the relief they seek, and at the same time to protect the medical profession from the threat of socialized medicine.

Mr. O'HARA. May I say, Mr. Chairman, that I intend to offer an amendment which will strike out the objectionable features of this bill, namely, amending B and striking out subsection 5. That will remove this tremendous grant of administrative absolutism to Mr. Ewing as the Food and Drug Administrator, and I am sure a great many Members and many, many of the people of this country do not want him to have such power.

You have a sugar-coated pill here. The question which came before us was the chaos created by the Dunbar speech at Atlantic City in 1948 when the traditional oral prescription was removed and the refilling of the prescriptions was eliminated. There was never an official ruling made by Food and Drug; just a speech by Dr. Dunbar, of the Food and Drug Administration, telling them how wrong it was. Everybody is for legislation that will clear that up.

But when they got that far, in comes the Food and Drug Administration and hang on a tremendous grant of power, which gives Mr. Ewing authority, from the traditional case-by-case decision, which he has today, to making 30,000 decisions at once or in doses of 500 or in doses of 100, and the retail druggists from then on are supposed to keep up with what goes on.

Here is another thing that it does: In the practice which exists today the druggist has the defense of good faith when he buys drugs from a drug manufacturer. Usually there is a guaranty on the bill of sale, or whatever passes from the drug manufacturer to him. It is a recognized fact that the retail druggist has that defense of good faith. I say this to you who are for the National Association of Retail Druggists—you can ask any lawyer what it means—the druggist is now eliminated from this defense of good faith under the language of this bill, and he is on his own.

There is another thing that the druggists of the country do not know what is happening to them. That is, if there are a large number, and I assume there will be, of these decisions on various items of drugs, it is going to be up to the druggist to see that he takes care of the labeling on his shelves. He is going to have to see from day to day what Mr. Ewing has passed out in the way of regulations, change the prescription drug to an over-the-counter drug, or an over-the-counter drug to a prescription drug. Now, let there be no question about that.

Mr. SPRINGER. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield to the gentleman from Illinois.

Mr. SPRINGER. By your amendment you will strike out section 5; is that true?

Mr. O'HARA. Yes.

Mr. SPRINGER. Will there be any substitute for section 5?

Mr. O'HARA. I do not know.

Mr. SPRINGER. With reference to the question of the right to judicial review——

Mr. O'HARA. Let me say to the gentleman that if the section is stricken out the judicial review is eliminated. You do not have to worry about that.

Mr. SPRINGER. That is what I wanted to be sure about. You are not going to have any problem of following decisions.

Mr. O'HARA. You have got these six or eight steps under this bill that the person affected would have to go through. When you get down to the end of it you have very little judicial review.

Mr. SPRINGER. By your amendment, what will it do?

Mr. O'HARA. It will amend subsection (B) and clarify it. I do not know what that will mean if it is not adopted in its entirety. It will mean that it will make it very simple and clear as to what the Administrator is to do in making

these tests. My amendment will then strike out subsection (5), which is the grant of power to the Administrator. He does not have to give anybody a hearing to make these decisions, and unless they object or petition for a hearing upon that previous decision. Now, that puts the burden of proof on the other foot, instead of as it is today. The burden of proof is reasonably upon the Administrator when he comes into court to enforce the authority which he has now. There is no question but that the Administrator has all the power in the world now. If a drug is mislabeled or misbranded or not approved as it should be for sale to the public, the Administrator has all the authority in the world to bring prosecution, either criminal prosection, or to seize it under a libel, and prosecute that action.

Mr. SPRINGER. Now, the third question: Under your amendment, will your definition be complete enough that these country stores and others who are now selling proprietary medicines can continue to do so in the same manner that they do now?

Mr. O'HARA. Yes; there is no question about that; he would still have the decision to make as to whether it was something that should be sold; he has that today.

Mr. DONDERO. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield.

Mr. DONDERO. If the gentleman's amendment should be adopted, would the ordinary person be able to have his prescriptions filled with the same ease with which he can do so today?

Mr. O'HARA. Yes; exactly; and without all of this other mess which is going to be confusing to everybody involved in the drug business.

Mr. DONDERO. Then what was the basis—and I do not ask the gentleman to repeat the statement he has already made—what was the basis of bringing this legislation to the floor of the House?

Mr. O'HARA. That was one of the strange things that my friends on the other side, on the right side of the aisle, are still apologizing for.

Mr. CRAWFORD. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield.

Mr. CRAWFORD. The bill was brought in by two professional pharmacists, was it not?

Mr. O'HARA. That is what I assume.

Mr. CRAWFORD. So there may be no doubt about it, it is a bill in favor of a special interest, the druggists.

Mr. GWINN. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield.

Mr. GWINN. Would not this be an intolerable and objectionable thing for the doctors if every time a person wanted Mothersill's seasick pills he had to go to his doctor?

Mr. O'HARA. And get a prescription.

Mr. GWINN. And get a prescription. Is not that right?

Mr. O'HARA. That is what could happen; and they say that even aspirin could be included, as a prescription drug.

Mr. CROSSER. Mr. Chairman, I yield 10 minutes to the gentleman from North Carolina [Mr. CARLYLE].

Mr. CARLYLE. Mr. Chairman——

Mr. WILLIAMS of Mississippi. Mr. Chairman, will the gentleman yield?

Mr. CARLYLE. I gladly yield to my friend from Mississippi.

Mr. WILLIAMS of Mississippi. The gentleman knows that they would never be able to put Mothersill's seasick pills or Lydia Pinkham's pink pills or Hadacol, or other such patent medicines on the prescription list under the definition mentioned in this bill.

Mr. CARLYLE. Mr. Chairman, I welcome this opportunity to make a few brief statements in support of this highly important and wholesome legislation.

Mr. Chairman, I would be unmindful of my duty should I fail to state that our able, experienced, and efficient chairman realized the importance of this legislation and he gave every interested party who expressed any desire to testify before our committee the opportunity to do so. I know of no person or corporation that has requested the opportunity to appear before our committee who was not afforded that opportunity.

This bill we are now considering is not based upon theory or conjecture; it is based upon actual experience of the druggists in this country. We know that the author of this bill is a Member of Congress and is at all times a dependable Member. I have known the gentleman from North Carolina [Mr. DURHAM] for more than 30 years. I know that he was a successful operator of a drug store and is now a skilled, successful, and highly efficient registered pharmacist in the State of North Carolina. Based upon his experience and upon his desire to be of assistance to the people of this country, he introduced this legislation.

I wish to state that my primary interest in this legislation is because I know that it is wholesome, that it is needed in this country in order to prevent gross injustice and to cure many evils that now exist. When you take into consideration that your action here today regarding this bill will vitally affect every home and every person in this country at some future date, you can readily see why you should give your best thought and consideration to this bill. Now, personally, I see no possible opportunity for one to become confused while considering this bill. There is no confusion in my mind.

The bill contains three separate provisions, and I ask you in your mind to answer which one you cannot wholeheartedly embrace. One section provides that a doctor shall have the right, if he thinks it is necessary, to transmit his prescription to the druggist by telephone. Of course, then the prescription druggist will make a copy of that prescription and file it. Probably thousands of instances occur in this country every day where a physician is called to a home or to the scene of an accident for the purpose of rendering services. When he there finds a prescription medicine is necessary, he may use a telephone to communicate with the druggist and the medicine is forthcoming. That is a violation of law in this country, both on the part of the physician and the druggist. One provision of this act expressly provides that condition shall be corrected and a doctor may have his prescription filled by transmitting it to the druggist by telephone. You know that is a wholesome provision in this bill.

There is another provision that I ask you to consider and to which I wish to invite your attention. If you desire to have a prescription refilled and harmful medicine is not required, then you may carry your prescription or carry your bottle to the druggist and this law will permit the druggist to refill your prescription provided the original prescription did not contain the statement by the doctor that it could not be refilled. You know that will prevent much confusion and loss of time and money on the part of the patient. This provision of the bill makes it easier for the patient to obtain a refill without having to obtain another prescription. Is there anything objectionable to that provision of this bill?

Now, the third provision which I ask you to consider is simply this: We know there are many drugs now being dispensed in this country that are in what we call the harmful classification. Harmful drugs may, in order that the public may receive proper attention, be dispensed only upon a doctor's prescription. There are other drugs that are not considered harmful that may be sold across the counter without a doctor's prescription. But within those two groups of drugs that have just been mentioned, harmful and harmless, there is a zone that is doubtful, and it gives the druggist considerable trouble to know at all times just which drug is harmful and which is not harmful. I say to you that the druggists throughout this country have figuratively speaking been swinging on the jail house door, because they are called upon in the course of their business to dispense drugs, many of them within the twilight zone, and the druggist oftentimes is unable to know whether he is violating the law by selling a drug that perhaps could be classified as harmful, without a prescription, and thus, of course, he would be violating the law.

Mr. BECKWORTH. Mr. Chairman, will the gentleman yield?

Mr. CARLYLE. I yield to my friend the gentleman from Texas.

Mr. BECKWORTH. The gentleman has made a very excellent point. The gentleman has heard the gentleman from Minnesota [Mr. O'HARA] say he is going to offer an amendment. Does the amendment he proposes to offer have any bearing on the correction the gentleman says should be brought about right there?

Mr. CARLYLE. I hope I shall have time to answer the gentleman before I conclude.

Mr. BECKWORTH. I am talking about the O'Hara amendment. Does the

gentleman know whether it has any bearing on that which he is talking about in the twilight zone?

Mr. CARLYLE. I tell the gentleman frankly, in answer to his question, I know of but one way to protect the American public and the druggist and that is to furnish the druggists throughout this country a list that will enable them to have some guide, some direction, which will assist them in making the decision as to whether it is harmful or whether it is not harmful.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. CARLYLE. I gladly yield to the gentleman from Arkansas.

Mr. HARRIS. Is it not a fact that if the amendment that is proposed by our colleague on the committee, the gentleman from Minnesota [Mr. O'HARA], is adopted, it would eliminate altogether the efforts to do something about this confusion?

Mr. CARLYLE. I would certainly think so.

Mr. BECKWORTH. Mr. Chairman, if the gentleman will yield further, is there any part of the legislation that the druggists, who seem interested in this bill, seem to want more than the gentleman is talking about?

Mr. CARLYLE. I agree with my friend from Texas. In conclusion, let me insist that we give to our druggists, who are located throughout all sections of this country, the protection that they are now asking for. Give them the right to have some assistance so that they may know that they are not dispensing harmful drugs. This is important legislation. I stated at the beginning of this statement that it touches every home and every person in this country. Let us be positive that we will be guided only to the end that we may afford the best possible protection to the druggists and to the people of this country.

Mr. WOLVERTON. Mr. Chairman, I yield 8 minutes to the gentleman from Michigan [Mr. BENNETT].

Mr. BENNETT of Michigan. Mr. Chairman, I would like to refer to some of the inconsistencies that have been brought into this debate. Some clarification is highly desirable at this point.

Three classes of drugs are covered by this bill. One is the habit-forming or narcotic type of drug. Nobody has any objection to the Federal Security Administrator having all the power in the world to control that type of drug. He has it now. It is being strengthened by this bill, and we have no objection to it. The next category is the new drug, and that has been entirely omitted in this debate. Under present law before a manufacturer can put a new drug on the market he has to go to the Federal Security Administrator and get permission to do it. The label that goes on that drug and whether or not it is a prescription or nonprescription drug has to be approved by the Federal Security Administrator. We do not have any objection to that procedure. That takes care of this new field, this new type of drug, that comes on the market, which may be dangerous, and ofttimes is, and we think that the Federal Security Administrator should have that power.

But what does this bill do? It goes much further. It gives to the Federal Security Administrator authority to classify some 30,000 other drugs that are on the market now, and many of them have been on the market for the last 50 years. There is where we part company with those who sponsored this bill.

There are less than 100 admittedly dangerous drugs being dispensed today. We are providing in this bill authority for the Federal Security Administrator to regulate 30,000 drugs. If he is not going to go into the field of drugs that are now on a nonprescription basis, why does he want this authority? There is no reason in the world for giving him this authority except on the basis that he will use it to take drugs that have been traditionally sold over the counter in the drug stores and in the country grocery stores around this country and put them on the prescription list. If he does not intend to do that, why is he asking Congress for authority to do it?

That is the sum and substance of this legislation. It is not a question of Oscar Ewing or a question of any other administrator. In my judgment, it is a question of whether Congress should delegate this kind of authority to any administrative agency.

What is the situation today? Under present law, the Federal Security Administrator can proceed against any drug manufacturer who he believes is putting out a dangerous drug without a prescription. He can take him into court and prosecute him. He can confiscate the drug. He can proceed against him by injunction. He has several remedies that he can pursue, all of which are effective, and all are in accordance with the standards set up in the law.

What would this bill do? It would simply enable the Administrator to prosecute the druggist or prosecute the drug manufacturer on the basis of regulations which he issues. Not on the basis of the standards set up in the law because, under the provision we are considering, we are giving the Administrator practically autocratic authority to issue these regulations.

This is what will happen. There are thousands of drugs as to which there is considerable difference of opinion, drugs that are being dispensed over the counter today. All the Administrator has to do to put an over-the-counter drug, a nonprescription drug, on the prescription list, is this: He calls in two or three of his medical experts. Everybody knows you can get medical experts to testify on both sides of any question. On the basis of the advice of his own medical experts, he can take a perfectly harmless drug or a drug that for years has been on the market and put it on the prescription list.

Mr. CRAWFORD. Mr. Chairman, will the gentleman yield?

Mr. BENNETT of Michigan. I yield to the gentleman from Michigan.

Mr. CRAWFORD. The gentleman started to make a point about what the Administrator could do with respect to harmless drug which have been sold for many years across the counter. He did not make that point. What can the Administrator do about it?

Mr. BENNETT of Michigan. The point is that the bill gives the Administrator complete and final authority to determine what is a dangerous or efficacious drug and what is not.

Mr. CRAWFORD. He does that with his own staff?

Mr. BENNETT of Michigan. In order to determine that, he calls in his own experts. Of course, the manufacturer of the drugs would call in his experts. So you would have three or four experts of the Administrator and three or four experts from the industry. Then the Administrator would make his decision, and of course he would make it on what his own experts said. The right of appeal which is provided here is a mere sham. It is a nullity. The Administrator has evidence upon which to support his finding and the court is powerless to do anything about it. It all boils down to the question of whether you want to fix the standards in the law. We have been willing to take the regulation which the Administrator has had on the books for some years; the regulation which he is proceeding under today, and in substance write that regulation into this bill. Therefore the question of whether a drug is dangerous or not can be decided by a standard written in a statute and when a drug manufacturer or a druggist appeals his case he will have his day in court. Whereas, under this provision, he does not have his day in court and he is simply out of luck.

It is said that this bill will be a boon to the retail druggist. There are many things the retail druggist does not understand about this bill. If this goes into effect there will be thousands of regulations issued by the Administrator listing these drugs. That means the corner druggist will have to get a copy of the Federal Register containing the list of those thousands of drugs and go over his entire inventory item by item and relabel them to conform with any changes made by the Federal Security Administrator. Do you think the corner druggist is going to like that kind of burden. But his troubles only start at that point. Each day thereafter and each week and each month thereafter he will have to refer to the regulations issued by the Federal Security Administrator, to know whether he is on the right track. The druggist is not going to have any additional protection. That is pure baloney. He cannot rely upon the label that is put on by the manufacturer. It is the regulation of the Federal Security Administrator that he must rely on. After this bill goes into effect, before a druggist can sell a single item on his shelf he must refer to this stack of regulations day by day. Do you not think that we have penalized the small-business man enough with OPS regulations and other governmental regulations being inflicted on him from day to day without handing him another package of this kind to swallow? I think

we ought to stop and give this proposal further thought.

The doctor, the druggist, and the pharmacist, none of whom agree as to how this problem should be settled, but all of whom are vitally affected, should know that there are many dangers involved. This bill should go back to the Committee on Interstate and Foreign Commerce for further study and consideration.

The CHAIRMAN. The time of the gentleman has expired.

Mr. CROSSER. Mr. Chairman, I yield 5 minutes to the gentleman from Alabama [Mr. ROBERTS].

Mr. ROBERTS. Mr. Chairman, I want to discuss the difference between the minority viewpoint and the viewpoint being sustained by the majority members of this committee.

Mr. WILLIAMS of Mississippi. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield.

Mr. WILLIAMS of Mississippi. I wish the gentleman would state that the minority viewpoint is a minority of 4 of some 12 or 15 members of the minority.

Mr. ROBERTS. I thank the gentleman for his statement. The only difference in these viewpoints is that the minority insists on the proposition that there should be on an appeal from the hearing held under the Administrative Procedures Act a trial de novo in the district court. We considered that proposition in our committee and discussed it thoroughly.

I would like to address myself to the minority viewpoint as expressed by the gentleman from Minnesota. We had Judge Harold Stephens appear before our committee and we listened with interest to what he had to say. They brought up a figure of 30,000 drugs which were to be decided in this listing procedure. I do not know where they got the figure, but I am willing to accept it and make no objection to it. With about 94 district courts in this country, and with manufacturers located all over this United States and the Territories, how in the world could you possibly get any uniformity in these decisions?

They accuse us today of attempting to give a bureaucratic group a great deal of additional power. Let me say this: Mr. Ewing is Administrator of three of our governmental Bureaus—the Public Health Service, Social Security Administration, and the Pure Food and Drug Administration. In carrying out the purposes of this act he is bound to be governed by the advice of experts, scientists, and chemists and men in the Pure Food and Drug Administration. As far back as I can remember they have had the power, as far as narcotics is concerned. We are not asking here for anything that is not already in our Government.

Let me point out to you a few examples. We have had administrative procedure before in the early days of our Government, in the Patent Office. It is also true in the Veterans' Administration, the United States Employees Compensation Bureau, the Social Security Board, the Railroad Retirement Board, the Internal Revenue Bureau, the Board of Tax Appeals, and the Selective Service Administration. All of those operate under the Administrative Procedures Act, and, as far as I have been able to find out, appeals from those decisions are made in exactly the same manner that we ask for in this present bill.

Mr. WILLIAMS of Mississippi. Is it not also a fact that the gentleman from Minnesota [Mr. O'HARA], who is opposing the granting of this authority to an administrative bureau, has the same authority and system of procedure in the fur bill which was passed in this House?

Mr. O'HARA. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Minnesota.

Mr. O'HARA. My fur labeling bill was to correct rackets. This bill will create one, in my opinion. That is why I am consistent about it.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Arkansas.

Mr. HARRIS. The gentleman does admit that the same procedure is in both bills?

Mr. O'HARA. No; I do not admit it is the same procedure.

Mr. ROBERTS. I will say this to the gentleman: His bill prescribes that the Federal Trade Commission make up a list of furs. They make up a list of regulations and the only appeal in your act would be this type of appeal.

Mr. O'HARA. We did not prescribe for any list. We compelled the fur manufacturer and the fur seller to put on the fur coat what it was—rabbit or ermine or mink or whatever it was.

Mr. ROBERTS. Well, does the gentleman admit that he did give power to a bureaucrat under this bill?

Mr. HALLECK. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield.

Mr. HALLECK. The Pure Food and Drug Act, under the requirements of the Labeling Act, the manufacturer must put on the label what he is selling.

Mr. ROBERTS. That is exactly what we are trying to do in this bill today.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

Mr. CROSSER. Mr. Chairman, I yield the gentleman one additional minute.

Mr. BECKWORTH. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield to the gentleman from Texas.

Mr. BECKWORTH. The gentleman has just made the statement that the manufacturer of drugs places on the package what the package is. One of the things that has the druggists throughout the Nation disturbed is the fact that the same thing is labeled two ways, and each is different. This bill has for its purpose the making of an uncertain situation in that connection, which exists in thousands of cases, a certain situation.

Mr. ROBERTS. The gentleman is eminently correct, and what we are trying to do in this bill is to nail down the authority somewhere—and the druggists want it nailed down. It reminds me of the old story about the mice holding a convention because the cat was catching too many of them. They agreed that something should be done, that a bell should be put around the cat's neck so they would know of its approach. The trouble was that they could not get any of the mice to put the bell around the cat's neck. They want the cat belled, and it is up to Congress to give the druggists some relief. The druggists of this country want this thing nailed down so they will not be slammed in jail, and that is what we are trying to do in this bill.

The argument is made by the gentleman from Minnesota that the review provided in the bill as approved by the committee is too narrow, and deprives the litigants or parties of their day in Court. To agree with him would be to destroy the benefits that this act seeks to provide. It is estimated in the minority report that there are some 30,000 drug items to be classified. Can you imagine the confusion and delay that would result if each one of these was to result in a trial de novo? I think one of the witnesses from the Food and Drug Administration estimated that it would take 10 years to settle these cases. And I think he was an optimist. There are ample precedents for establishing a list by regulations. Our own Government has since the adoption of the first Federal Food and Drug Act in 1906 done so. Many of the States list these drugs by statute, and Canada does so by regulation.

In a letter from the Honorable Henry P. Chandler to the Honorable ROBERT CROSSER, dated March 29, 1951, this statement is made—pages 6 and 7 of the hearings:

> I would point out that the provision that appeals from the order of the Administrator shall be in the nature of a trial de novo, reverses what has been for 20 years or more a uniform trend in the Federal Government to provide for the hearing and decision of appeals from orders of administrative agencies by the courts of appeals upon the record made before the agencies. This procedure has been repeatedly provided for by the Congress, most recently by a law passed at the end of the Eighty-First Congress and approved December 29, 1950 in relation to the review of certain orders of the Federal Communications Commission, the Secretary of Agriculture, and the United States Maritime Commission (Public Law 901, 81st Cong.)

Those who are opposed to the power given to the Administrator suggest a case-by-case settlement of the dangerous drugs and new drugs. The implications and dangers of such a policy are readily apparent. I would like to call your attention to the arguments put forth in the majority report contained on page 10:

First. First the administrative decisions will involve only the drug manufacturers, those who are primarily interested. It would not involve the retail druggists whose only interest is to obtain certainty as to how they may sell given drug.

Second. The duty of determining what is a prescription drug is, by its nature a legislative or rule-making function, unsuited for solution, solely through the judicial process.

Third. The authority is entirely consistent with the action of the Congress in 1938 when the Administrator was given the authority to list habit-forming derivatives of the drugs named in section 502 (d), and it has not been suggested

that this authority has been abused. Attention is further directed to the fact that many States so list by regulation, and the Dominion of Canada.

Fourth. The judicial review provisions afford adequate protection against arbitrary and unjustified action on the part of the Administrator.

Fifth. The proposal of the drug manufacturers that the listing proceed on the case-by-case basis would result in great confusion. Manufacturers situated in different locations and proceeding in different district courts would obtain different results adding up to general confusion. There are more than 80 Federal district courts. With or without juries no uniformity could be obtained.

Sixth. Delay that would result would be injurious to the general public. The sex hormone case took 2 years to settle.

Mr. WOLVERTON. Mr. Chairman, I yield the balance of my time to the gentleman from Maine [Mr. HALE].

Mr. HALE. Mr. Chairman, this bill, as I think most of the Members now realize, represents a very sincere, conscientious, and rather arduous attempt on the part of the Committee on Interstate and Foreign Commerce to cope with very serious problems in the dispensing of drugs.

The three problems which presented themselves to the committee were: First, that of the oral prescriptions; second, that of the refill, so-called; and third, that of the matter of dispensing dangerous and habit-forming drugs. All of these questions concern the responsibilities and hazards of the druggist. They also concern the safety and convenience of the drug-buying public. The committee tried to give due regard to the welfare of the druggist and the consumer. They also listened at length to testimony of drug manufacturers.

I should have thought in my innocence that there was a good deal to be said for the rule against any kind of oral prescription on the ground that oral prescriptions are subject to misunderstanding, but the unanimous testimony of the drug industry, of the druggists, the drug manufacturers, and everybody who came before our committee was that oral prescriptions should be permitted.

Much of the trouble about refills came from the speech made by Mr. Paul Dunbar at a convention in Atlantic City in 1948 when he said that the prescription, once it had been filled, was like a paid and canceled check; it had lost all its force, all its validity, and you had to go back to the doctor to bring such a prescription back to life.

Mr. NICHOLSON. Mr. Chairman, will the gentleman yield?

Mr. HALE. I yield.

Mr. NICHOLSON. Was that the reason they made it so that anybody who wanted another prescription had to pay another $3 to the doctor?

Mr. HALE. That is the kind of thing we are trying to avoid in this bill. I think the bill offers a very adequate and satisfactory solution of the problem of the oral prescription, and the problem of the refill. All the controversy comes over the provisions protecting the public and protecting the druggist in the case of the dangerous and habit-forming drugs.

I was in the minority in the committee; I was one of four who voted for the form of bill which the American Drug Manufacturers advocated that gives no administrative discretion to the Federal Security Administrator to list dangerous and habit-forming drugs. If you do not put that provision in the bill, to be sure, you will have the druggist in a state of some uncertainty, which is what the majority members of the committee were worried about. On the other hand, that uncertainty does not seem to me to be too serious because, if a druggist is worried as to whether a drug he is selling is dangerous and habit forming, he can refuse to sell it without prescription and thus keep himself in a position of safety.

Mr. WOOD of Idaho. Mr. Chairman, will the gentleman yield?

Mr. HALE. I yield to the gentleman from Idaho.

Mr. WOOD of Idaho. Is it not a fact, sir, that habit-forming drugs are no part of this bill at all, that they are under the Harrison antinarcotic law?

Mr. HALE. I must confess to the gentleman I am not too familiar with the provisions of the Harrison antinarcotic law.

Mr. WOOD of Idaho. I believe that is the fact.

Mr. HALE. There are provisions of the Food and Drug Act of 1938 in reference to habit-forming drugs. I refer specifically to section 502 of the Food and Drug Act of 1938.

Mr. WOOD of Idaho. Nembutal and such drugs are spoken of as habit-forming drugs when as a matter of fact they are not habit-forming drugs.

Mr. HALE. That is precisely the situation which presents difficulties, because drugs which some people regard as dangerous and habit-forming are not so regarded by others.

Mr. Chairman, I am in favor of this bill in its present form. I would be more in favor of it with paragraph (B) on page 5 stricken out. Of course, if you strike out that paragraph, then it follows that you must strike out the paragraph relating to appeals on page 7 due to the fact that there is no necessity for appeals if you have no administrative discretion in the Federal Security Administrator. If you do have any kind of discretion in the Federal Security Administrator, you cannot draw your appeal provisions too carefully, and this appeal provision is very carefully drawn.

Mr. MASON. Mr. Chairman, will the gentleman yield?

Mr. HALE. I yield to the gentleman from Illinois.

Mr. MASON. Do I understand that the gentleman approves two provisions of the bill but disapproves of the other and that in spite of the fact there is one section of the bill the gentleman disapproves of he feels the over-all picture is such that it would be better to adopt the bill and swallow the part that he does not approve of?

Mr. HALE. The gentleman characterizes my position fairly accurately. I think that the present state of the law is so unsatisfactory to the druggist and the consumer that the Congress must legislate to clear it up. It should do so without delay.

Mr. HESELTON. Mr. Chairman, I ask unanimous consent to extend my remarks at this point in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. HESELTON. Mr. Chairman, this legislation, as recommended by the Committee on Interstate and Foreign Commerce by a vote of 19 to 4, is a carefully considered proposal in a field which is admittedly difficult and technical.

Legislation was proposed in substantially the same form as H. R. 3298 in the second session of the Eighty-first Congress.

The committee held hearings on 5 days, two being full-day sessions. Its consideration of the legislation in executive session covered 7 days. The bill itself, as reported, is clear evidence of the efforts made by the committee to present to the House as sound and workable legislation as could be devised.

So far as I know, there is little, if any, objection to the provisions authorizing oral prescriptions or refills of prescriptions. Consequently, I would like to discuss briefly the provisions for establishing a list of drugs and the provision for judicial review.

Admittedly, the provision for establishing a list of drugs gives rise to the main controversy which exists as to this bill.

The National Association of Retail Druggists, representing some 35,000 retail drug-store owners throughout the Nation, supports this provision.

The American Pharmaceutical Association, which is described as a national, nonprofit, professional body of pharmacists, pharmaceutical educators, law-enforcement officials, research workers, and others interested in the protection of public health and the prevention and treatment of disease, is opposed to this provision. That is also true of the American Pharmaceutical Manufacturers Association, which has over 200 members in this country and in Canada; of the American Drug Manufacturers Association, which has 67 members, a list of which is included at page 150 of the hearings; and of the Proprietary Association, which consists of about 150 members.

However, I think it should be made clear that in connection with the opposition expressed by the American Pharmaceutical Association there is clearly a difference of opinion among its membership.

First, when Mr. Robert P. Fischelis, secretary and general manager of the association, was testifying before the committee I inquired if it was not a fact that the National Association of Retail Druggists included in its membership a great many pharmacists, and he replied that it did. It is, therefore, obvious that those pharmacists who support the position of the National Association of Retail Druggists are in disagreement with the American Pharmaceutical Association.

Next, I am sure that we all have had indications of differences of opinion among the pharmacists as to the position taken by their national association.

The gentleman from Washington [Mr. MITCHELL] brought that to our attention forcibly yesterday afternoon when he included in the RECORD the telegram which reported that the pharmacists of the State of Washington, in convention at Yakima, unanimously endorsed the bill, and when he included similar endorsements from the dean of the College of Pharmacy at the University of Washington and the professor of pharmaceutical chemistry at that university. These will be found at page 9236 of the RECORD.

Further evidence of this disagreement appears in the telegram at page 9240 of the RECORD from the secretary of the Illinois Pharmaceutical Association to the gentleman from Illinois [Mr. SABATH] urging that a rule be granted on this bill.

I assume that all of us have received telegrams from people who are sincerely in opposition to this provision, using almost identical language, to the effect that the one who sent the telegram "is vigorously opposed to subparagraph (B) of paragraph (1) of this bill" and describing it as containing "unnecessary and arbitrary powers proposed to be granted to the Federal Security Administrator."

I think there is no question but that the granting of any extensive power to the present Federal Security Administrator immediately gives rise to serious concern in the minds of a great many people. However, it seems clear to me that if we are to accomplish anything in a field which admittedly requires definite and affirmative action, we must recognize that some agency must be given the power to do such things as will eliminate, as far as humanly possible, the confusion and uncertainty which now prevails.

During the executive consideration of the bill I tested the possibility of providing for action by the professional and trained group charged with the day-to-day administration of the Food and Drug Act, but I must admit that I think any such proposal could not stand the test of considered action. Rather, I think we must accept the factual situation which exists and rely upon the probability that these professional and competent people will, in large measure, do the actual work involved and upon what I believe to be a completely satisfactory provision for judicial review. Beyond that, is the clear fact that should there be any instances of arbitrary, unwise or unsound administration, Congress can and undoubtedly would take prompt remedial action.

I think I should add that the hearings disclosed an attitude on the part of the Administrator which is certainly commendable. He repeatedly emphasized that while the situation could be partially dealt with through regulation and, in fact, furnished the committee with the text of a regulation which was under consideration, he felt the subject was of such importance and of such complexity that he believed it ought to be dealt with in a comprehensive way, by legislation rather than by administrative regulation.

There is another phase of this problem which has seemed to me to be of great importance. Under the situation prevailing now the druggists and pharmacists find themselves in a position where they are constantly confronted with the possibility of criminal prosecution or seizure in order to determine the legality of their action in selling certain drugs. It seems to me obviously preferable and in the clear interest of the druggists, the pharmacists, the physicians, and the public generally, that instead of a prolonged series of criminal prosecutions or seizures in order to distinguish between prescription drugs and over-the-counter drugs, the over-all recommendation of the committee should carry great weight with the membership of this House. In that connection I recommend reading three paragraphs of the committee report at pages 9 and 10 entitled "Proposed Statutory List," "Case-by-Case Judicial Determination," and "Considerations Which Influenced the Committee's Decision."

The provision for judicial review is a vitally important part of this legislation. Under the amended bill, the provisions of section 701 (f) and (g) of the present law will insure that any interested person may obtain judicial review by a United States court of appeals and, upon certiorari, by the Supreme Court of the United States.

As a result of the recent decision of the Supreme Court of the United States in the Universal Camera Corp. against NLRB, there is very definite guaranty now that the reviewing courts are not limited to a mere finding in the record of evidence which, when viewed in isolation, substantiated the administrative agency's finding but, rather, they are required to review the case upon the whole record in making a determination where the administrative ruling is supported by substantial evidence. The testimony of Hon. Harold M. Stephens, Chief Judge of the United States Court of Appeals for the District, is extremely important and I am certain was considered by every member of the committee as a most effective contribution to the consideration of this phase of the bill. All of his testimony will be of value to anyone who is concerned about the problem of arbitrary or capricious action by administrative agencies without the possibility of adequate review in our courts.

In conclusion, and in connection with this phase of the problem, I wish to quote four paragraphs from his testimony which I am convinced constitute a very important part of the legislative history of this bill and, in fact, provide a most thoughtful expression from one of our ablest jurists. The quotation follows:

> I wish to add, if I may, that I am in sympathy with the requirements of Congress in the Administrative Procedure Act, and I am sure that all judges in the district courts and circuit courts of appeal are fully in sympathy with the requirements of the Congress in the Administrative Procedure Act. Wherever we do review the action of the commissions we do so upon the whole record in determining whether the administrative ruling is supported by substantial evidence.
>
> While I had to obey the rule, because I am bound by the decisions of the Supreme Court as a circuit judge, I did not at all sympathize with—and I am sure I reflect the view of the whole circuit court of appeals when I say we did not at all sympathize with restricted powers of review accorded to us by the earlier decisions of the Supreme Court. But the Supreme Court has recanted and confessed its error in those respects in these two recent cases—the Universal Camera and the Pittsburgh cases. And the Congress has also corrected the rule governing our scope of review in the Administrative Procedure Act. * * *
>
> I would like to add just this, before I close: I can assure you that the circuit courts of appeal of this country, who are the courts of last resort in the Federal system except in the few cases that go to the Supreme Court, feel a very real responsibility in dealing with these commission appeals. We feel the same responsibility we do in reviewing the decisions of the United States district courts, to see to it that the litigants have had a fair hearing and that the Administrator's findings are supported by substantial evidence and are not arbitrary.
>
> I might remind you that in the Administrative Procedure Act passed by this Congress, in the review section it has been made necessary for the circuit courts of appeals to go as far as this. You have said to us: "So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence." So we do have, imposed by you, a solemn responsibility, and I assure you we discharge it with deliberation and pains.

Mr. CROSSER. Mr. Chairman, I yield 5 minutes to the gentleman from Florida [Mr. ROGERS].

Mr. ROGERS of Florida. Mr. Chairman, I want to first preface my remarks by saying this bill is sponsored and introduced by the distinguished gentleman from North Carolina [Mr. DURHAM], one of the outstanding Members of this House, one who is a druggist and a pharmacist.

Mr. Chairman, it seems to me that we have gotten into a lot of discussion that is not pertinent to the provisions or purposes of this bill. I want to say this, that your committee studied this bill; they had executive sessions on this bill; this bill was discussed thoroughly; it came out of your committee with a vote of 19 to 4. There were four who were not in accord with the provisions of this bill.

In order that we might see what we are doing here, let us see what the present law is and just what we want to do. In the first place, under the present act there is confusion in the administration of this law even among the manufacturers, because some of them put out a drug that is to be dispensed only on the

prescription of a doctor, whereas on that same identical drug, if it is made by another manufacturer, it can be sold over the counter. Now, this confusion must be righted here.

Here is another thing. Under the present law you cannot have a prescription refilled unless the doctor, who gave that prescription, says it is refillable. Now, we have incidents like this. Here is a farmer or a merchant who goes to the doctor and he possibly wants to get aspirin—I am using that as an example—and he is given a prescription for aspirin. Unless the doctor says this is refillable—and of course, the farmer does not know what it is—he cannot go back there to the pharmacist or the druggist and have it refilled under the present law. Now this law that we are trying to establish here will permit those prescriptions to be refilled if the medicine is not dangerous, or if it is not toxic or it is not a habit-forming drug. Now that is one thing.

Another thing under the present law, you take doctors, you cannot always get to them; you cannot always get to the druggist, and they cannot telephone in to the druggist for the prescription. They cannot telephone the prescription to the druggist under the present law, and that should be corrected. This law corrects that; he is permitted to do that, with this proviso, that it be immediately written down, so the druggist has a record of what the prescription is, so in the event there is any harmful result coming from the prescription you can lay the blame where it belongs. That is another thing. Under the present law, that also is up to the Administrator. When a druggist or pharmacist sells some drug without a prescription, a drug that is dangerous or that is habit-forming, the Administrator has to go down there and prosecute that man. Under this law the druggist or the pharmacist will know before he sells it whether it is a prescription drug, or whether it is a drug that can be sold over the counter.

Those are the things we are trying to cure. Is there anything objectionable to that? The American Medical Association did not object to this bill. We had weeks of hearings on it, and they did not come in there and object to any provision of this bill.

This seems to me to be a bill with some virtue attached to it, with some merit to it. It is a bill that is endorsed by the druggists and the pharmacists. This is a bill which will bring some remedy into the present situation which we find ourselves in, and I hope that this House will adopt it.

Mr. WILLIAMS of Mississippi. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, this bill is much needed legislation. What the American druggist is seeking is certainty in dispensing drugs. The bill as written will give him certainty. If the language in subsection (b) (1) is eliminated and the O'Hara language is substituted therefor, all of the certainty that is given to the druggist in this bill will be removed, and the druggist will find himself in the same predicament in which he finds himself under the present law.

Mr. KLEIN. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Mississippi. I yield to the gentleman from New York.

Mr. KLEIN. Just to clear up an uncertainty here, and I know it has been stated by the gentleman and by many Members on the floor, is it not a fact that this legislation if enacted would benefit the small-business man, the small druggist, throughout the country?

Mr. WILLIAMS of Mississippi. Not only would it benefit the small druggist but it would also afford protection to the public against the dangers of buying toxic drugs over the counter.

Mr. KLEIN. Does not a relative of the gentleman, I believe his father, run a small drug store?

Mr. WILLIAMS of Mississippi. Yes; but I am not taking part in this debate on the basis of setting myself up as an expert by any means; I am not a druggist.

Mr. MEADER. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Mississippi. I yield to the gentleman from Michigan.

Mr. MEADER. If the language could be so drafted as to protect the druggist without giving dictatorial power to the Federal Security Administrator, would the gentleman object to such an amendment?

Mr. WILLIAMS of Mississippi. That is what the bill does. I am supporting the language that is in the bill, because it does the very same thing the gentleman seeks to do, that is, to delegate this authority to the Administrator and then tie his hands so that he cannot abuse that authority.

The CHAIRMAN. All time has expired.

The Clerk will read the bill for amendment.

Mr. HARRIS. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. HARRIS. Mr. Chairman, is it not a fact that the substitute bill will be read in its entirety before amendments will be in order?

The CHAIRMAN. The gentleman is correct.

The Clerk read as follows:

Be it enacted, etc., That subsection (b) of section 503 of the Federal Food, Drug, and Cosmetic Act, as amended, is amended to read as follows:

"(b) A drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of section 502, except paragraphs (a), (i) (2) and (3), (k), and (l), and the packaging requirements of paragraphs (g) and (h), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription, or of its filling, the name of the prescriber, and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or otherwise without examination of the patient. If the drug is intended for use by man and—

"(1) is a habit-forming drug subject to the regulations prescribed under section 502 (d);

"(2) has been found by the Administrator, after investigation and opportunity for public hearing, to be unsafe or ineffective for use without the professional diagnosis or supervision of a practitioner licensed by law;

"(3) if an effective application under section 505 limits it to use under the professional supervision of a practitioner licensed by law, such exemption shall apply only if such drug is dispensed upon a written prescription of a practitioner licensed by law to administer such drug or upon an oral prescription of such practitioner which is reduced to writing and filed by the pharmacist; or is dispensed by refilling a prescription if such refilling is authorized by the prescriber in the original prescription or by oral order and such order is reduced to writing and filed by the pharmacist.

"The Administrator may by regulation remove drugs subject to section 502 (d) and section 505 from the provision of this subsection when such requirements are not necessary for the protection of the public health.

"A drug which is subject to clause (1), (2), or (3) of this subsection shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement 'Caution: Federal law prohibits sale or dispensing without prescription.'

"The act of dispensing a drug contrary to the provisions of this subsection shall be deemed to be an act which results in the drug's being misbranded while held for sale.

"Any interested person may file with the Administrator a petition proposing the addition to, or deletion from, the list of drugs promulgated by the Administrator in accordance with clause (2) hereof. Such petition shall set forth the proposal in general terms and shall state reasonable grounds therefor. The Administrator shall give public notice of the proposal and an opportunity for all interested persons to present their views thereon, orally or in writing, and as soon as practicable thereafter shall make public his action upon such proposal. At any time prior to the thirtieth day after such action is made public any interested person may file objections to such action, specifying with particularity the changes desired, stating reasonable grounds therefor and requesting a public hearing upon such objections. The Administrator shall thereupon, after due notice, hold such public hearing. As soon as practicable after completion of the hearing, the Administrator shall by order make public his action on such objections.

"An order so issued by the Administrator may, within 90 days after its issuance, be appealed by any interested person in accordance with the provisions prescribed in section 701 (f) and (g) of this Act, except that an appeal from the Administrator's order issued hereunder shall be in the nature of a trial de novo, without presumptions in favor of either party to such appeal.

"The provisions of this section of the act shall not be applicable to drugs now included or which may hereafter be included within the classifications stated in section 3220 of the Internal Revenue Code (26 U. S. C. 3220), or to marijuana as defined in section 3238 (b) of the Internal Revenue Code (26 U. S. C. 328 (b))."

With the following committee amendment:

Strike out all after the enacting clause and insert the following: "That subsection (b) of section 503 of the Federal Food, Drug,

and Cosmetic Act, as amended, is amended to read as follows:

"'(b) (1) A drug intended for use by man which—

"'(A) is a habit-forming drug to which section 502 (d) applies; or

"'(B) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, has been determined by the Administrator, on the basis of opinions generally held among experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug (and, where a public hearing is required by paragraph (5), on the basis of evidence adduced at such hearing by such experts), to be safe and efficacious for use only after professional diagnosis by, or under the supervision of, a practitioner licensed by law to administer such drug; or

"'(C) is limited by an effective application under section 505 to use under the professional supervision of a practitioner licensed by law to administer such drug, shall be dispensed only (i) upon a written prescription of a practitioner licensed by law to administer such drug, or (ii) upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist, or (iii) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act which results in the drug being misbranded while held for sale.

"'(2) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of section 502, except paragraphs (a), (l), (2), and (3), (k), and (l), and the packaging requirements of paragraphs (g), and (h), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or otherwise without examination of the patient or to a drug dispensed in violation of paragraph (1) of this subsection.

"'(3) The Administrator may by regulation remove drugs subject to section 502 (d) and section 505 from the requirements of paragraph (1) of this subsection when such requirements are not necessary for the protection of the public health.

"'(4) A drug which is subject to paragraph (1) of this subsection shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement "Caution: Federal law prohibits dispensing without prescription." A drug to which paragraph (1) of this subsection does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence or any other statement which represents or implies that the dispensing of the drug without the prescription of a licensed practitioner is prohibited.

"'(5) Any interested person may file with the Administrator a petition proposing the making of a determination, or the modification of a determination made or proposed to be made, by the Administrator pursuant to subparagraph (B) of paragraph (1). The filing of a petition for the purpose of opposing a proposed determination that a drug is one to which such subparagraph (B) applies shall stay the operation of paragraph (1) with respect to such drug until a petition for judicial review can be filed and interim relief sought under section 10 (d) of the Administrative Procedure Act. The petition shall set forth in general terms the proposal contained therein, and shall state reasonable grounds therefor. The Administrator shall give public notice of the proposal made in the petition and shall give to all interested persons a reasonable opportunity to present their views thereon, orally or in writing, and as soon as practicable thereafter shall make public his action on the proposal. At any time prior to the thirtieth day after such action is made public, any interested person may file with the Administrator objections to such action, specifying with particularity the changes proposed, stating reasonable grounds therefor, and requesting a public hearing for the taking of evidence of experts who are qualified by scientific training and experience to testify on the question of whether the drug in question is safe and efficacious for use only after professional diagnosis by, or under the supervision of, a practitioner licensed by law to administer such drug. The Administrator shall thereupon, after appropriate notice, hold such public hearing. As soon as practicable after the hearing, the Administrator shall make his determination and issue an appropriate order. The Administrator shall make his order only after a review of the whole record and in accordance with the reliable, probative, and substantial evidence, and shall make detailed findings of the facts on which he based his order. Such order shall be subject to judicial review in accordance with the provisions of section 701 (f) and (g).

"'(6) Nothing in this subsection shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications stated in section 3220 of the Internal Revenue Code (26 U. S. C. 3220), or to marihuana as defined in section 3238 (b) of the Internal Revenue Code (26 U. S. C. 3238 (b)).'

"SEC. 2. The provisions of this act shall take effect 6 months after the date of its enactment."

Mr. ROBERTS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Page 5, line 11, strike out "and efficacy"; and on page 5, lines 14 and 15, and page 8, lines 13 and 14, strike out "and efficacious for use only after professional diagnosis by, or under the supervision of," and insert "for use only under the supervision of."

Mr. ROBERTS. Mr. Chairman, when this bill was being considered in committee there was quite a difference of opinion as to the meaning of the word "efficacy" and the meaning of the word "efficacious." Webster's dictionary defines efficacious to mean possessing the quality of being effective. Many of us feel perhaps that is too broad and in fact many of us voted to strike those words out in committee. I feel the bill will be just as good and will accomplish the same purpose and will answer some of the objections being made along the line that we are giving too much power to the Administrator.

Mr. WILLIAMS of Mississippi. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield.

Mr. WILLIAMS of Mississippi. I am in accord with the gentleman's amendment as I think practically every other member of the committee now is. Of course I cannot speak for the committee but the committee took action on this language and voted to leave the language in the bill. However, subsequent developments, I believe, have shown that language is superfluous and should be taken out. There has been a great deal of dispute over the words "efficacy" and "efficacious." The objections to those words are based on fears that the Federal Security Administrator would have the power to ban drugs from the market entirely if he decided that they are not efficacious. The majority report pointed out that such was not the intention of the bill and that the objections arise because of the failure to read the entire language of the paragraph. The purpose was to require that drugs which are not poisonous but which are nevertheless unsuitable for use by laymen must be dispensed on prescription only. I hope this amendment will not meet with any opposition. I feel that this amendment eliminates the dangers which are anticipated in this bill by the gentleman from Minnesota, that is, the granting to the Federal Security Administrator of improper or unwarranted authority.

Mr. HESELTON. Mr. Chairman, will the gentleman yield?

Mr. ROBERTS. I yield.

Mr. HESELTON. I think it might be helpful to anyone who is doubtful about the wisdom of this amendment if I call attention to the fact that when this mater was discussed with Mr. Ewing he finally said as to these words, "We think this adds something to the protection of the bill, but it is nothing I would die for." In other words, they themselves admit there is a question as to the desirability of having these words in the bill. Personally it seems to me that we should go ahead with the provisions with regard to safety and that we might well postpone action on this doubtful use of these words which the gentleman seeks to strike out.

Mr. ROBERTS. I thank the gentleman for his remarks.

The CHAIRMAN. The time of the gentleman has expired.

Mr. O'HARA. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this bill was originally sold to you as the perfect bill. What has just happened illustrates that my distinguished committee has now changed its mind or at least a part of the membership of it has changed its mind on the question of amendments that it is desirable to have in the bill.

Mr. WILLIAMS of Mississippi. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield.

Mr. WILLIAMS of Mississippi. The gentleman knows I supported the amendment to take the word "efficacious" out of the bill in committee.

Mr. O'HARA. That is one of the objections I have to the bill. But I have an amendment which I think will do a much better job than the amendment offered by the gentleman.

Mr. WILLIAMS of Mississippi. The gentleman agrees that the position we have taken is that this language should be stricken out of the subsection in which it presently appears in the bill; does he not?

Mr. O'HARA. I think it is a fair comment to say it illustrates that one of the

members of the committee is now unhappy about the language and that the gentleman from Mississippi [Mr. WILLIAMS] who has been most active in charge of this bill is unhappy about some of this language. I am unhappy about some more of it and as soon as this amendment is disposed of I hope to offer an amendment which will get at the meat of this thing.

Mr. BENNETT of Michigan. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield.

Mr. BENNETT of Michigan. The reason they are unhappy about it is the very point we have tried to make—because it gives too much authority to the Federal Security Administrator. I think the gentleman from Mississippi [Mr. WILLIAMS] will admit that.

Mr. O'HARA. He so stated, as I understood him.

Mr. HESELTON. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield to the gentleman from Massachusetts.

Mr. HESELTON. I am sure the gentleman would agree that it is only fair to the members of the committee which considered this bill to state that I submitted a motion to strike those words from the bill, and that there was a very close vote. So that it was pinpointed to these very words.

Mr. O'HARA. The gentleman is correct.

Mr. PRIEST. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield to the distinguished gentleman from Tennessee.

Mr. PRIEST. I just want to state, along with the gentleman from Massachusetts [Mr. HESELTON], that I supported the amendment in the committee to strike the words, and I think they should go out.

Mr. O'HARA. Let me say to the gentleman from Tennessee [Mr. PRIEST] that I think he is a little bit troubled about section 5 also. I hope he will give me the same support on my amendment. I intend to offer the amendment which I indicated in my previous remarks. I am not speaking for the gentleman's conscience, because I know he is very honest about it.

Mr. WOLVERTON. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield to the gentleman from New Jersey.

Mr. WOLVERTON. The thought has been expressed several times that some members of the committee were unhappy, after further consideration, about having the words now under consideration in the bill. I do not think it is a question of happiness or unhappiness that suggests this amendment. I think the amendment is suggested to make those who are opposed to the words a little happier by striking the words out of the bill.

Mr. O'HARA. I have in mind that some of the 19 Members who strongly supported the bill are now anxious to amend it.

I trust the amendment will be voted down, so that we can get to my amendment correcting the entire subsection (b) and this obnoxious subsection (5). I will say that striking out the word "efficacy" makes it a little more palatable, but not palatable enough.

Mr. CRAWFORD. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield to the gentleman from Michigan.

Mr. CRAWFORD. To what group of people does the language on line 10, page 5, refer, where it says: "Experts qualified by scientific training and experience"?

Mr. O'HARA. I will tell you what that means. That means that you are giving to the Administrator the right to call in anybody; and he determines who is the expert, does he not?

Mr. CRAWFORD. That is my understanding.

Mr. O'HARA. Of course. He is going to take his opinion, and when he makes that decision you will never get a reversal in any circuit court or Supreme Court in the United States.

Mr. CRAWFORD. May I ask one other question?

Assuming that a man with great experience and scientific training did attempt to say that a drug was efficacious: On what ground can he do that? What scientific knowledge gives him the ability to say that a certain drug will cure my cold when my cold might be caused by something he knows nothing about?

Mr. O'HARA. The gentleman has opened the way to a realm of speculation that is as vast as the heavens. A drug which might be efficacious to the gentleman might be deadly to me.

Mr. CRAWFORD. Certainly. Anybody who has dealt with drugs or who has bought patent medicines, hydrocol, or otherwise, without diagnosing the case, these scientific men cannot tell. We have thousands of them under the soil now who were put there by men who did not know what they were doing.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. O'HARA] has expired.

Mr. HARRIS. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, it is quite obvious that because of the technicality of this legislation there is a great deal of confussion. I can readily understand that. This committee wrestled with this problem for many, many weeks. The very word in question here, "efficacy" or "efficacious," was a matter of discussion over a long period of time.

I respect the views of the gentleman from Minnesota [Mr. O'HARA] and those who are opposed to the provisions of this bill affecting the determination of what drugs will be safe and dispensed over the counter or by prescription. When this motion to strike out this word was offered in committee, I voted against it. There is some question as to the effect of it. It is a highly technical provision. I will say to my colleagues that in my opinion you do not understand just the meaning of it. Take the word as presented to us here as it applies to the Food and Drug Act, it has a lot of meaning in the legislation. In my opinion because of the history behind it and as in the regulation administered by the Food and Drug people it adds something to the Food and Drug Act. I am not going to oppose striking it out, because after further consultation with so many who feel that it would have a different application, I think perhaps time will prove to us that it may be necessary to change the definition in the Food and Drug Act of the word "safe" and the Congress is going to have to do it.

Under the definition of the Food and Drug Act of the word "safe" it applies to poisonous drugs, those drugs that are toxic; and anyone knows—and I am not an expert in the drug business—anyone knows there are many drugs on the market that are not poisonous, that are not toxic, but yet they would have an ill effect upon a human being.

I may also say that if this word is stricken out, which it probably will be, it may very well be necessary that we come back in here at a later time and redefine the word "safe" in the interest and the protection of the public.

There has been a lot of confusion about just what this means, the whole act itself; and I think the debate has been very helpful. Certainly they are questions for argument. But when the question is finally resolved this issue means: Are you going to adopt legislation that will provide someone with the authority to determine after obtaining information from the experts in the field what is best for the general public? Or are you going to leave it to the commercial interests? That is the whole issue that we have before us here to determine. Certainly I am not for giving some administrator or bureau wide latitude and authority to impose himself upon any commercial interest or the people——

Mr. SMITH of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I am interested in just what the gentleman is interested in, the protection of the people of this country.

I yield to the gentleman from Wisconsin.

Mr. SMITH of Wisconsin. Why is not that a matter for the States to determine?

Mr. HARRIS. The States cannot possibly determine that because manufacturers of drugs ship in interstate commerce, and the States could not possibly control it.

Mr. SMITH of Wisconsin. We have State control now to a considerable degree.

Mr. HARRIS. This does not affect that.

Mr. HESELTON. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I think it is only fair and may be helpful to the Members who are seriously concerned about the situation which does in fact affect the druggists and pharmacists of this country as well as the general consuming public, if further attention is given to the charge that it might be possible for Mr. Oscar Ewing somehow or other, under the terms of this bill, arbitrarily to make a determination based upon testimony or opinions of a loaded set of experts as to the listing of a drug.

I know, and I want to stress this again, that this bill came out of committee by a vote of 19 to 4. I have the highest regard for my four colleagues on my own side of the House who differ

with the majority of the members of the committee. They have had a full opportunity this afternoon to explain their position. I think it may only be fair for some of the rest of us who worked on this bill to try to clear up some of the existing confusion.

What we are talking about is found in this language on page 5:

Because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, has been determined by the Administrator—

Certainly he has to make a determination. Somebody has to. I do not believe there is any other way by which we can provide for its determination except through some official in the executive department; we gave some consideration to a legislative list but decided that was impossible.

Then the bill continues—

on the basis of opinions—

Not the opinions of the department's executives but of opinions—

generally held among experts qualified by scientific training and experience to evaluate the safety and efficacy of such drug.

What does that mean? Every reputable drug manufacturer in this country has a staff of recognized experts. You know and I know that all of the colleges of pharmacy have a staff of recognized experts. There are textbooks, many of them recognized as authoritative. Now, all that is what the committee intended should be taken into account when these determinations are made.

Then further:

Where a public hearing is required by paragraph (5), on the basis of evidence adduced at such hearing by such experts.

What experts? Not only the experts of the department but experts from private life, from private industry, from educational institutions, experts who have an established reputation in the field.

Going one step further, I wish there was time for you to examine all of the testimony. There is provision for judicial review, which my colleague from Minnesota admits is tied up with this. In a case decided in the United States Supreme Court in February of this year there has been a sharp change in review procedure. There is now an absolute and a definite requirement that the reviewing court shall take into consideration the entire record, not what we had to contend with before, where it could simply find that the administrative agency's ruling was correct if there was any evidence in support of it. If you will read the testimony of Chief Justice Stephens of the circuit court of appeals I think you will be impressed with the fact this committee has sought to surround action by this particular agency with every kind of a safeguard it could think of.

I suggest that all this talk, all of this fear that has been expressed this afternoon because Oscar Ewing happens to be the present individual who would have to put his name to some sort of determination is something that is unwarranted. We know that all of the druggists are begging for action on this. Yesterday we had telegrams presented to us from pharmacists in the State of Washington and another from the State of Illinois in reference to the matter urging enactment of the committee bill. I know the members of the committee realize that there are many pharmacists who feel this is absolutely necessary. We have no authentic information that any physicians are opposed to it.

I think the major problem that confronts us is that we have a situation that is confusing and uncertain, which can only be determined by a series of criminal prosecutions or seizures or injunctions and harassment of the druggists and pharmacists of the country. I suggest that the basic reason for our support of this legislation should be in the interest of public health and the general welfare of the people who must depend on us to provide sane and constructive legislation.

Mr. BECKWORTH. Mr. Chairman, will the gentleman yield?

Mr. HESELTON. I yield to the gentleman from Texas.

Mr. BECKWORTH. One of the important reasons why the druggists throughout the country want this legislation may be found on page 96 of the hearings. There is a list of well over 100 or 150 who have been convicted for the over-the-counter sale of drugs, many of these people, I dare say, selling them innocently. They do not like it and they want it changed.

The CHAIRMAN. The time of the gentleman from Massachusetts has expired.

Mr. KERSTEN of Wisconsin. Mr. Chairman, I ask unanimous consent that the gentleman may proceed for two additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. KERSTEN of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. HESELTON. I yield to the gentleman from Wisconsin.

Mr. KERSTEN of Wisconsin. I would like to ask the gentleman a question with reference to his argument relating to the phrase "opinions generally held among experts." May I ask the gentleman who makes the determination as to what these opinions are? Is it not the Administrator?

Mr. HESELTON. The Administrator, of course, subject to review of the court on a much broader scale than had been in existence prior to February of this year.

Mr. BENNETT of Michigan. Mr. Chairman, will the gentleman yield?

Mr. HESELTON. I yield to the gentleman from Michigan.

Mr. BENNETT of Michigan. What is there to review if the Federal Security Administrator has three experts and the drug industry has three experts?

Mr. HESELTON. I have already indicated the nature of the expert testimony and opinions. Then the courts have to review the full record, as the gentleman well knows, and they now have to make a decision taking into consideration the full record.

The CHAIRMAN. The time of the gentleman from Massachusetts has again expired.

Mr. WILLIAMS of Mississippi. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, in regard to the question the gentleman asked, here is the scope of a review under the Administrative Procedures Act:

(e) So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 1006 and 1007 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

I hope that answers the gentleman's question.

In support of the amendment offered by the gentleman from Alabama, I would like to ask the gentleman from Minnesota a question: Is it not a fact that he purposely left the words "efficacious" and "efficacy" out of the amendment which he will offer a little later on?

Mr. O'HARA. I suppose when we come to that and dispose of this it is not important. Of course, I am leaving it out. I am rewriting the whole section. As long as the gentleman is talking about this review business, does he know that one of the food and drug provisions on appeals provides as follows: "The findings of the Administrator as to the facts, if supported by substantial evidence, shall be conclusive," which means that there is practically no review at all?

Mr. WILLIAMS of Mississippi. The gentleman knows that the court has a right to determine whether the Administrator's decision is based on substantial evidence, and if it is based on substantial evidence the decision cannot be questioned.

Mr. Chairman, I ask for a vote on the amendment and hope that it will be adopted.

Mr. MILLER of Nebraska. Mr. Chairman, I move to strike out the last two words.

Mr. Chairman, I can see that this is a rather complicated bill. I might say that the committee appointed by the House, the Special Committee on Foods, Fertilizers, and Chemicals, has been holding some hearings over a period of more than a year now and has been wrestling with some of the problems we

have in this bill. For instance, in the bread hearings, as to whether or not softeners in breads and certain chemicals were harmful. We came to this determination, while we have not presented any legislation, we thought instead of leaving it up to an administrator to make a decision of vast importance, that would have such wide effect on industry and upon the public, that perhaps a board should be set up, a board of experts, who would make the decision for the administrator. In any law or any legislation you pass, there must be someone who is going to make decisions.

Coming back to our hearings on the use of chemicals, pesticides, and fertilizers, do you know that there are nearly 800 chemicals knocking at the door of the food industry for admission? Some 400 of them have been investigated. There are nearly 300 chemicals that we do not know what reaction they will have when they get into the blood stream. There is a tremendously wide field developing at a pace which is astonishing as to what chemical should be permitted, for instance in food. The Food and Drug Administrator or someone must be in position to make some of those decisions. It occurs to me that the bill now being considered gives too much power to the Administrator, I care not if he be a Democrat or a Republican. A commission, in my opinion, would be the better approach.

I am also concerned about the advertising in the newspapers and over television and the radio. It is a disgrace and an insult to human intelligence and jeopardizes the reputation of everyone who deals in the welfare of the sick. It is amazing how advertisers are permitted to hoodwink the public into buying worthless vitamins and other near useless products. The public needs protection from swindling quacks and medicine men. Many of the over-the-counter drugs and patent medicines are harmful.

Some of us may look a little askance at some of the fertilizers that come into the food stream, as to what happens to the children of this country, and what happens to some of these poisonous things that are being injected into the food stream. I am convinced that the Food and Drug Administration does not have enough power to determine those things quickly at this time.

Mr. HINSHAW. Mr. Chairman, will the gentleman yield?

Mr. MILLER of Nebraska. I yield to the gentleman from California.

Mr. HINSHAW. The gentleman suggests a board and that was considered at one time. I wonder if the gentleman will not agree that the decision of the Board that he proposes would be in effect identical with the advice the Administrator would receive under the terms of the bill.

Mr. MILLER of Nebraska. It should not be.

Mr. HINSHAW. Who would appoint the board?

Mr. MILLER of Nebraska. We would have on that board that we planned in the legislation we hope to bring in industry, for instance. Industry may not always agree with the Administrator. We will have on the Board men of known chemical and research ability. We have had those experts before our committee. We would have somebody on there representing the Government and somebody representing the people. I think with that type of Board they could sit down and come to a conclusion which I think would be in the interest of the public.

Now, as to the different drugs, as a physician, I recognize that you have to have a good deal of leeway in permitting prescriptions to be filled. We speak about filling prescriptions by phone. It is not supposed to be done, according to the law, and some men have been caught by it. I think that half the prescriptions that are being filled today are filled this way. The doctor picks up the telephone and calls the druggist and says, "I want so-and-so filled." This is being done and you might as well make it legal, if it is against the law now, because they will continue doing it.

I also feel that the laws related to the issuance of barbiturates and the self-medication that presently is permitted ought to be tightened up.

I support the O'Hara amendment and trust the committee will give attention to a commission and not give so much power to an Administrator.

Mr. BONNER. Mr. Chairman, I move to strike out the last two words.

Mr. Chairman, I asked certain questions about this bill yesterday and received some answers, yet I am in doubt as to whether or not the language in this bill would not make it possible for those who manufacture and have been selling old-line prescriptions under patents to find themselves entangled in some rules and regulations that would be promulgated by the Administrator under this bill. This bill in itself gives the Administrator that power.

Mr. Chairman, I received the following telegram from the North Carolina Medical Society. I think in the State of North Carolina we have about as fine a group of practicing physicians and as fine a hospital system as will be found in any State in the Union.

The telegram is dated July 27, Raleigh, N. C., and is as follows:

RALEIGH, N. C., *July 27, 1951.*

Hon. HERBERT BONNER,
House of Representatives,
Washington, D. C.:

Reference bill 3298, Medical Society, State of North Carolina opposes those sections extending unwarranted authority granted Federal Security Administrator to codify drugs as to efficiency or to determine whether sold to public without prescription. These matters should be reserved to physicians, pharmacists authorized by State law to so function.

JAMES T. BARNES,
Executive Secretary, Medical Society of North Carolina.

When the medical society of my State comes out as strongly as this in opposition to a piece of legislation, which I admit I am unable to digest and to determine just what it contains, then I myself would think a long time and would want a great deal of explaining before I would support it.

Mr. Chairman, I think this bill covers more territory than has been discussed on the floor so far.

Mr. JENKINS. Mr. Chairman, will the gentleman yield?

Mr. BONNER. I yield to the gentleman from Ohio.

Mr. JENKINS. I have a telegram from the State medical society of the great State of Ohio to the same effect and import as the gentleman has received.

Mr. BONNER. In addition to that, I have received a telegram from an old established firm in North Carolina, the Vicks Chemical Co. In their organization they have chemists and pharmacists. They certainly have attorneys to advise them, and their attorneys have advised them, so I am told, that they might be called up before the Administrator and during the determination, by the Administrator of their product their product might be held from the market.

I have simply pointed to one instance, and there are others. So this might be an opening wedge to a piece of legislation which this House refused to adopt some time ago. I have great faith in the intelligence of men to prescribe sometimes for themselves; but when, as has been said here, one doctor might give me a prescription which might work for me and another doctor might give you a prescription which might work for you, and when some patent medicines do not cause the patient to respond as rapidly as other patent medicines do, I have my doubts as to the ability of one individual to determine all of these things. I do not know what the ability of the Administrator is to make all these determinations.

Mr. FENTON. Mr. Chairman, will the gentleman yield?

Mr. BONNER. I yield to the gentleman from Pennsylvania.

Mr. FENTON. The State of Pennsylvania Medical Society, with the endorsement of the American Medical Association, has no objection to authorizing the refilling of prescriptions, but they do object to section B.

Mr. BONNER. I thank the gentleman.

Mr. Chairman, I have not been able to discuss the bill with the author. He is a fine, grand gentleman. I know there are certain provisions in the bill which should be written into law to protect druggists and doctors, but beyond that I do not like to go. I would like to vote in support of a bill which would take the proper action to protect druggists and doctors, but I do not like this other part of the bill which has to do with determining the efficiency of medicines.

The CHAIRMAN. The time of the gentleman from North Carolina has expired.

Mr. HARRIS. Mr. Chairman, I ask unanimous consent that debate on this amendment close in 10 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

Mr. HOFFMAN of Michigan. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, the gentleman from North Carolina [Mr. BONNER] seems to be laboring under the same doubts that I have in my mind. I can best illustrate

the arbitrary conduct of some of the Department's agents by citing a case of several years ago, when a manufacturing chemist, doing business in practically all of the United States, had quite a quantity of his products seized in several States because it was charged that they were mislabeled. I went to the Department and asked them to point out to me what was wrong about the labels and to give me some idea as to what should be printed on them so that our maufacturing chemists could properly label their products and comply with the law and the Department's regulations. There was no claim that the product was injurious. The complaint and seizure was on the ground that it was not technically properly labeled.

Do you know what the Department said? The Department said: "Oh, that is up to the manufacturer. Let them figure it out, and if it doesn't suit us we will seize their product."

I went one step further, and I said, "How about seizing it in the factory where it is put up and labeled?" "Oh, no," they said, "just wait until they ship it into other States, Indiana, Ohio, and so on, and then we will seize it."

The company suggested that the Department's agents come into the plant, go through every department and take from the shelves all products that they thought were either mislabeled or that contained ingredients which made the sale in interstate commerce unlawful. The company offered to waive, in writing, the question of whether the goods were in interstate commerce.

The Department's agents refused to do that. Then the company offered to ship the products into Indiana—the State line being only some 70 miles away—the Department could there seize merchandise which it claimed was misbranded or improperly manufactured.

The Department's agents refused to do that, but stated that they would and they did seize some of the company's products which they found on the shelves of purchasers who were located far from the point of manufacture.

Now you know that that arbitrary, unreasonable action served no good purpose. It seriously interfered with the company's business. For what small, or even large, retailer wants to have the local people know that merchandise sold by him has been seized because it was alleged by the Pure Food and Drug Department of Uncle Sam—that it was being sold in violation of law, was either a misbranded, injurious, or dangerous product.

Now, it is that sort of conduct that our people are afraid of, that I fear, this arbitrary, unreasonable attitude on the part of the administrators. That is one of the objections to this bill. Everyone wants to protect the health of our people, to prevent their being imposed upon by being sold products that are not properly labeled, but we do not like to have people on the Government payroll come along and make trouble just because they happen to have a little authority.

Mr. WILLIAMS of Mississippi. Mr. Chairman, will the gentleman yield?

Mr. HOFFMAN of Michigan. Yes, I yield to the gentleman.

Mr. WILLIAMS of Mississippi. I think the gentleman misunderstands what we are intending to do. That is really the thing we are seeking to remedy.

Mr. HOFFMAN of Michigan. I do understand what you are trying to do, but I know what the departments are trying to do. I know they can protect the people without a grant of additional power.

This department or agency is just like every other Federal, executive department—give anyone of them a little power over the activities of our people and immediately they seek more power, then more money to pay more employees. It is a strange but neverthless characteristic trait of practically every agency or department of Government, whether it be Federal, State or local, to want more power, more employees, more funds—an opportunity to grow greater. A grant of arbitrary or even discretionary power always, unfortunately, seems to call for greater authority.

Let me give you another illustration, more recent, of arbitrary action by the department:

Section 204, subdivision (a) of the Federal Food, Drug, and Cosmetic Act as amended (21 U. S. C., sec. 342) defines adultered food. It states:

A food shall be deemed to be adulterated: (a) (1) if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or * * * (3) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or (4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; * * * or, (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

Recently I sought to amend subsection (3) so that it would read as does (1), as follows:

If it consists in whole or in part of any filthy, putrid, or decomposed substance; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantitiy of such substance in such food does not ordinarily render it injurious to health.

The reason for that amendment is disclosed in hearings not yet printed which were held by a subcommittee of the Committee on Expenditures in the Executive Departments. Those hearings were held in Michigan. Growers, processors, and representatives of the food and drug department of the State of Michigan appeared and testified.

I have been advised that Michigan cans three-quarters of the canned black raspberries of the country. Black raspberries, red raspberries, and blackberries, and many other berries and fruits, as they grow in the fields or orchards, have mold in them, but the mold is not injurious to health. So I proposed an amendment as just outlined; this came up after the Department had seized quantities of this canned product, which they admitted was not harmful, was not injurious, was a wholesome, tasty food. I proposed an amendment which would prevent seizure, and if there was mold in the berries as processed, they were not to be seized, not to be declared unlawfully sold, if they were not injurious to public health, and I tried to get the Department to establish a standard; that is, a rule or regulation which would declare what percentage of the product could show mold without being subject to seizure. The State authorities did establish a percentage of 75 percent, I think it was. That does not mean that 75 percent of the product was moldy. It means that in 75 percent of the areas they could, under a microscope, discover mold. They could not smell it or taste it, but when they put a microscope on it they could find a little something there that indicated mold. They made no claim that the mold on the product was unwholesome or injurious or distasteful. So if a canner did not just walk the chalk line, if he was a little hurried in having to get the berries through the factory and did not use as nice words as the inspector thought he ought to, the product could and would be seized, as inspectors had been doing. In one instance the Department agent seized the produce; and they did, some $3,700 worth in one instance, admitting all the time that it was not injurious to anyone and that no one could learn there was mold in it except as they put a microscope on it. The State gave us relief; that is, the State of Michigan established a standard of tolerance for mold, but did these fellows down here? They would permit some mold, but how much? Would they tell the growers or the processors? No, sir; not on your tintype. And along comes this fellow from the Department, Deputy Administrator George Larrick who apparently would not know a raspberry from a pumpkin, and spills himself in the paper thusly——

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. HOFFMAN of Michigan. Mr. Chairman, I ask unanimous consent to proceed for five additional minutes that I may finish this story.

The CHAIRMAN. The time has been fixed.

Mr. HOFFMAN of Michigan. Then I offer a motion to strike out the enacting clause.

The Clerk read as follows:

Mr. HOFFMAN of Michigan moves that the Committee do now rise and report the bill back to the House with the recommendation that the enacting clause be stricken.

The CHAIRMAN. The gentleman is recognized for 5 minutes in support of his motion.

Mr. HOFFMAN of Michigan. Referring to my attempt to obtain an amendment to the legal definition of adulterated food as carried in section 342 of title 21 of the Code, which would enable growers, processors, and retailers to put a tasty, wholesome, noninjurious food—the black raspberry crop—in the hands of consumers when I proposed an

amendment to subsection 3 of section 342, practically identical language to subsection 1, he apparently gave a reporter of the Washington Daily News an interview for the News of that date. Referring to that amendment the reporter writes:

> Bugs baked into cake, catsup made with spoiled tomatoes, and moldy raspberries—all will be on your dinner table one day if a bill introduced by Representative CLARE E. HOFFMAN, Republican, Michigan, becomes law.
>
> The bill would amend the Federal Food, Drug, and Cosmetics Act to allow food to be marketed with "filthy, putrid or decomposed" matter as long as the matter is not "added" and would not be "injurious to health."
>
> At least this was the interpretation of Deputy Food and Drug Administrator George Larrick when asked about the bill today.
>
> Even so, "The way it reads bakeries could make cake with contaminated flour—with bugs and rodent hairs and some of the other things we find—without our being able to do anything about it," Mr. Larrick said. "The baking processes would kill any harmful bacteria and make it technically uninjurious."

Now, the attitude taken by this gentleman illustrates the all too often arbitrary, unreasonable position and misleading statements put out by the Department spokesmen every time anyone ventures the thought that perhaps the Department's employees, and that is what they are, might just possibly not know everything that is to be known, should not be trusted with the opportunity to injuriously destroy whole sections of our economy.

I never heard of anyone who wished to use or have others use filthy, putrid or decomposed food as those words are commonly understood. Nor did I ever know of anyone who wanted to make it possible for a grower, a processor or a retailer to induce a consumer to purchase a food which was not what it was represented to be.

Permit me now to give you an illustration of just how untruthful and I might add, knowingly untruthful if he has any intelligence at all, is this Deputy Administrator George Larrick, if he is correctly quoted. The press carries this quotation from him:

> The way it—
>
> Meaning the amendment—
>
> reads—bakeries could make cake with contaminated flour—with bugs and rodent hairs and some of the other things we find—without our being able to do anything about it.

The absurdity of that statement, its falsity, is apparent on its face. Certainly Mr. Larrick knows that flour containing bugs, rodent hairs and the other things to which he refers has had something "added to it," or is he so set in his ways that he is trying to make us believe that bugs and rodent hairs are a part of the wheat as it grows—as mold is a part of black raspberries as they grow and as the State health authorities of Michigan have recognized?

This one illustration just given and which is Mr. Larrick's and the Department's only contribution to a situation which exists in Michigan where growers of nutritious, wholesome berries—where processors who at the cost of thousands of dollars have hired State and other inspectors—skilled chemists, microscopic experts, who have sterilized all receptacles used to collect berries from the time they are picked until they reach the processing machinery, are trying to lower the cost of living by putting a product on the market where otherwise it would either be not grown or wasted. Black raspberries as grown carry mold as does the air we breathe, at least that is the testimony of the experts—the experts told us that the moment one of the little droplets breaks down the berry is "decomposed," or it has started to rot. The same experts assert that this mold is not harmful, that it may even, like penicillin, be a curative mold.

But the Department all blown up by its own conceit, acknowledging the healthfulness of the product, will not establish a mold standard so that farmers may be encouraged to plant and grow the berries, so that processors may handle them, and the rest of us have available at reasonable cost a delicious, nourishing food or dessert.

Taking note of the above, perhaps you can get a dim idea of just how unreasonable and arbitrary some of these gentlemen may be. It is possible that it is this arbitrariness, this unreasonableness, on the part of these gentlemen in the Department that frightens the gentleman from North Carolina [Mr. BONNER].

Did anyone here ever eat a beefsteak which was not decomposed?

In *A. O. Andersen & Co.* v. *United States* (234 Fed. 542) the Ninth Circuit Court of Appeals, said:

> Decomposition may begin where life ends, but meat or fish is not decomposed at that early stage. Decomposed means m re than the beginning of decomposition; it means a state of decomposition, and the statute must be given a reasonable construction to carry out and effect the legislative policy or intent.

Do the gentlemen of the Department ever gracefully accept a reasonable ruling of the courts such as that which has just been quoted? Oh, no.

Processed black raspberries are decomposed whenever Mr. Inspector has a grouch.

Black raspberries, as they mature, have mold in them, and as they ripen some of the little cells containing the substance of the berries inevitably break down. Those cells are decomposed—they are rotten, but until they have reached an advanced stage of decomposition, or where the mold is excessive, they are tasteful and nutritious—but will the Department let them pass? Not if the inspector got out on the wrong side of the bed or if his breakfast did not agree with him, or if someone has not treated him with proper deference.

These gentlemen down here say that if there is any mold, if there is any decomposition, even though it does not hurt anyone, the product is rotten. Did anyone ever eat a piece of cheese where, somewhere along the course of its manufacture, it did not contain decomposed milk? No; of course, you did not; and blue cheese—the more mold there is in it the better. And penicillin. Do they object to that?

But if you can with a microscope find a little bit of mold in a berry it should not be sold. So the United States Department tells the grower, the processor.

Does that mean anything? Yes; I have here an article in our local newspaper where the berry grower says that his whole crop when put on the market brought a price of $1.60 a crate—this was just last week. It cost him $1.50 a crate to pick, package and deliver. He did not count his work in growing, in spraying, in cultivating nothing for investment. So he said to the folks "Come in if you want berries; you pick them, but bring your own containers." He did not propose to furnish containers. And growers are forced out of business—processors just turn to other fruits or vegetables. The consumer has his supply cut short.

Now, what is the Drug and Food Department down here doing? They are taking off of the local processing market tons and tons of wholesome berries and fruits because the processors will not take the risk, will not can this crop when they know that at the whim of some bureaucratic agent down here it is subject to seizure. If they would give us a tolerance for mold it would be all right; but, no, they will not do it; they want to go around the country and show their authority.

Yet the berries which our local processors cannot handle are often sold at a lesser price to processors from Detroit or Chicago who process them and put them on the market, without fear of seizure. Moreover, if not bought by processors some of this fruit, but at a lesser price goes on the fresh market, is bought and used by the housewife—as critical but at the same time reasonable an inspector as ever bought a food product or condemned a food.

Mr. O'HARA. Mr. Chairman, will the gentleman yield?

Mr. HOFFMAN of Michigan. I yield.

Mr. O'HARA. Did I understand the gentleman to say that not only are they mistaken but they are arbitrary? Is that a correct quotation?

Mr. HOFFMAN of Michigan. Arbitrary. Brother, you have never seen anything until you have seen these gentlemen and the agents from the Labor Department who go into the factories and tell all the workers that they are working too hard for too little money, producing too much—making trouble. Stalin's agents never were able to stir up as much discord in this country as the agents of some of these departments, whose heads swell out of all proportion the moment they get a badge. That is why I do not want to give an administrator this arbitrary authority.

Mr. SMITH of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. HOFFMAN of Michigan. I yield to the gentleman from Wisconsin.

Mr. SMITH of Wisconsin. Are we to infer from what the gentleman has said that he has no confidence in Oscar Ewing?

Mr. HOFFMAN of Michigan. I would not want to express an opinion on Oscar at this time. I heard him testify once it was not only his right but duty to use Federal funds to spread the gospel as he interpreted it to the people of the country, although I know there is a

statute which makes it a criminal offense to do that with Federal funds.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. HOFFMAN of Michigan. Mr. Chairman, I ask unanimous consent to withdraw my motion.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Alabama [Mr. ROBERTS]

The amendment was agreed to.

Mr. O'HARA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. O'HARA:

Page 5, strike out lines 6 to 16, inclusive, and insert in lieu thereof the following indented paragraph:

"(B) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or."

On page 7 strike out line 13 and all that follows down through line 25 on page 8.

On page 9, line 1, strike out "(6)" and insert "(5)."

Mr. O'HARA. Mr. Chairman, I ask unanimous consent to proceed for 10 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. O'HARA. Mr. Chairman, I have asked for additional time so that I might fully explain what this amendment does to the pending bill. Let me say that it represents the controversy which lies between the majority side and the minority side of the committee upon this bill.

Mr. WILLIAMS of Mississippi. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield to the gentleman from Mississippi.

Mr. WILLIAMS of Mississippi. I wish the gentleman would not say "minority side." I wish he would tell the truth and say "minority of the minority of the committee."

Mr. O'HARA. If the gentleman is going to be technical, may I say I have been on a minority of 9 out of 435, yet my position was sustained in the other body and became law. I do not know what a minority is any more, but I have been in the minority many times. The gentleman has repeatedly stated that the vote was 4 to 19. I am happy to be one of those 4. I would be happy to be 1 if I thought I was right.

Mr. Chairman, I should like to proceed and tell you exactly what this amendment does.

First it corrects subsection (B) and takes all of this confusing language out that so many Members have talked about and puts it in simple language, it gives the Administrator all the authority in the world for the protection of the public and enforcement of the law as to the safety of the public that he can possibly ever need without the uncertainty of these experts and all of that which is in the committee amendment.

Mr. BENNETT of Michigan. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield to the gentleman form Michigan.

Mr. BENNETT of Michigan. Those in charge of the administration of this law some 10 years ago, in 1941, agreed with the position now taken by the gentleman from Minnesota. At that time it issued a directive or memorandum—I do not know what you would call it—with respect to defining and listing prescription drugs. This is what it says:

The Administration—

That is the Food and Drug Administration—

has received numerous requests from drug manufacturers, retail and wholesale drug associations, and others, for a list of those drug products which it considers dangerous when sold otherwise than on the prescription of a physician, dentist, or veterinarian licensed by law to administer drugs.

In answer to such requests, the Administration has pointed out that the Food, Drug, and Cosmetic Act places upon the manufacturer and the distributor the responsibility for properly safeguarding the marketing of drugs which may be dangerous to the purchaser if distributed without restriction. Obviously, it is impossible to list all drugs which may be dangerous since not only the compositions but also the directions for use and the conditions in which their use is recommended may have a very definite bearing on the question of safety or danger.

That was their decision 10 years ago.

Mr. O'HARA. That they could not make such a list as they now claim they can, of 30,000 drugs.

Mr. BENNETT of Michigan. And with an additional 3,000 since.

Mr. AUGUST H. ANDRESEN. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield to the gentleman from Minnesota.

Mr. AUGUST H. ANDRESEN. Of course, at that time they did not have Oscar Ewing running the show.

Mr. O'HARA. That is true. There is no question but what the amendment to subsection (B) is plain and broad and gives the Administrator all the power he needs. I wish you would turn to that portion which my amendment strikes out, commencing on line 13, page 7. Here is what the bill gives to the Administrator and what goes on if he makes these 30,000 decisions, or any part of them. Someone, of course, has the right under the bill—they call this protection—to start in then and object to what is done. All right. The first thing the Administrator does is to give notice after the objector has filed objections to that classification. Thereafter the Administrator makes public his action on the proposal. Then, No. 3, within 30 days after such action the interested party may file with the Administrator his objections, stating the changes proposed, and all of the other things that he has to go through. No. 4: Then the Administrator shall give notice and hold a public hearing. No. 5: Then the Administrator shall make a determination and issue an order. If summons and petition is served on the Administrator, the Administrator shall certify and file in the court the transcript of the evidence and then the poor fellow is finally in the Federal court of appeals.

But, what is he up against under this bill? He is up against this situation. No. 1, the burden of proof has been shifted from the Administrator to the person affected. No. 2, he is up against this impossible situation, and any of you who are lawyers know what it means to appeal from a finding of fact by a court or administrative body; he is up against this provision of the law:

The findings of the Administrator as to the facts, if supported by substantial evidence, shall be conclusive.

Now, that means that, under this bill, if you were opposing some order that was made as to what this drug was, a prescription or nonprescription drug, the Administrator, under the decisions of the courts, both as to the Food and Drug Administration and the Federal Trade Commission and these various administrative agencies, can call in an expert. Under the decision, even if that expert is biased, and the reviewing court says he was biased, they still must affirm that finding. Now, that is a perfectly ridiculous situation to give this tremendous power to Oscar Ewing. I like Oscar Ewing personally; I like his frankness. He is for socialized medicine. He has stated so on two or three different occasions before our committee.

Mr. DONDERO. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield to the gentleman from Michigan.

Mr. DONDERO. Does that mean that the ordinary individual, a doctor or pharmacist or druggist, is denied his day in court? Is that what it means?

Mr. O'HARA. That is what it means.

Now let me pursue it further. I admire Oscar Ewing for his frankness and honesty. On at least two, possibly three, occasions I heard him say that the medical expenses of the people of this country should be paid for by the Government, whether the people who incurred the medical expense are in a position to pay or not. He has repeated that on two or three different occasions. He has written a book, which is a blueprint, in my opinion, for the program of socialized medicine, and we fought all last year in our committee, practically, over the so-called socialized medicine bill. His book is entitled "The Nation's Health: A Ten-Year Program—A Report to the President by Oscar R. Ewing, Federal Administrator," and printed at Government expense. Seventy-five thousand copies have been circulated in the country.

As to this delusion about the Administrator not having authority, there is absolutely no question that if there is any mislabeling of drugs or misrepresenting to the public of drugs which have not been passed upon and approved, the Administrator has all the power in the world to prosecute those people both criminally and civilly, civilly by seizing the drug and criminally by prosecuting them for violation of the law.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield to the gentleman from Arkansas.

Mr. HARRIS. Is it not true that we had testimony before our committee which showed that a certain type of

chalk made by one manufacturer had one label on it when they sent it to the druggist and when it was made by another manufacturer it had another label on it? Would it not be true that if this provision that is proposed here were to prevail, the Administrator would have the right to see that the manufacturers had to label that item properly?

Mr. O'HARA. There is no question that under the law today and under my amendment he would have a right if that article was mislabeled to prosecute those people, but as to this mislabeling of chalk, some kind of chalk, I have forgotten what it is called, a perfectly harmless drug, it is true that some drug manufacturers manufacture to sell over-the-counter products and other manufacturers sell and want to sell only to physicians and druggists for prescription use. There is a difference in the viewpoint of the drug manufacturer. I do not see that there is anything confusing about it. I think all this talk about these little items, because there are a few items where one drug manufacturer takes one view, and another a different one, is not important. I do not like the confusion but I do not think it amounts to anything.

Mr. HARRIS. I believe the gentleman will have to admit it does amount to a lot, because if one of the antibiotics, for instance, were involved it would have a tremendous effect on the health of the people.

Mr. O'HARA. Is any claim made on the gentleman's part that any antibiotics are mislabeled? Is there? The gentleman is talking of a few items of drugs that do not amount to a great deal.

Mr. HARRIS. I am sure the gentleman will recall when a few years ago these sulfa drugs first came out, and many, many people throughout the country died as the result of their use.

Mr. O'HARA. Yes; it may be that that is true, but they were approved by the physicians, they were approved by the Food and Drug Administration, and it was not because the Administrator did not have the authority to do something about it.

Mr. MASON. And they were not mislabeled.

Mr. O'HARA. They were not mislabeled. They were told exactly what they were. However, the reaction was not known as definitely as it developed later, and they did not know what should also be administered. That was the point.

Mr. HALLECK. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield to the gentleman from Indiana.

Mr. HALLECK. In respect to the alleged need for this section to which the gentleman refers in this legislation, I am informed that Mr. Larrick, Associate Commissioner of the Food and Drug Administration, testified before the House committee in these words: "The present law, so far as it has been interpreted, is sufficient to protect the consumer."

Mr. O'HARA. I know there is no question about it. The consumer and the public are amply protected under present law. What is being attempted here is to give this terrific amount of power to Oscar Ewing and the Food and Drug Administration to bring about a complete change in the entire picture in this country. Let me say to you, and I say it in all seriousness, that this bill, at least as it is now written, is the handmaiden of socialized medicine.

Mr. KEARNS. Would the gentleman explain whose brain child this bill is? That is the thing I cannot find out. Where did it originate?

Mr. O'HARA. The first time I heard of it was when I heard of the Humphrey-Durham bill.

Mr. HALLECK. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield.

Mr. HALLECK. As I understand it, the bill as originally introduced did not have this controversial section in it.

Mr. O'HARA. The gentleman is correct, I believe.

Mr. HALLECK. It had to do with telephone prescriptions and the refilling of prescriptions.

Mr. O'HARA. That is right, and we are leaving all of that in the bill.

Mr. HALLECK. When the druggists back home write us, as some have written to me to tell us to be in favor of the Humphrey-Durham bill do they have in mind the bill originally introduced which did not include this controversial section?

Mr. O'HARA. I cannot assume that they do. I know some of my colleagues have sent them copies of the bill and they have said "We do not want that bill." That is all I know. They say "We do not want that part of it."

Mr. HALLECK. I received one letter where the druggist wrote me "This bill enables pharmacists to fill and refill prescriptions according to their ethical and professional training which after all is the best judge in such matters." Would that particularly have reference to the filling and refilling section of this bill?

Mr. O'HARA. That is my interpretation of it. That is what I have heard from all of the druggists that have contacted me and that is what they are interested in.

Mr. HALE. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield.

Mr. HALE. If the gentleman will look at page 2 of the bill, lines 16 to 20, he will observe these provisions giving wide powers to the Administrator were in the bill as originally introduced.

Mr. O'HARA. I spoke of the original bill. That is the gentleman's interpretation of the last bill. We may be correct. I think the gentleman was as anxious as I was to strike those powers out. I think he felt they were too broad.

Mr. HALE. Yes; but in the interest of accuracy I think it should be said that the original Durham bill did confer powers on the Administrator which were of quite wide nature.

Mr. O'HARA. I do not believe section 5 was in the original bill, before us.

The CHAIRMAN. The time of the gentleman from Minnesota has expired.

Mr. O'HARA. Mr. Chairman, I ask unanimous consent to proceed for two additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. BONNER. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield.

Mr. BONNER. There is a question I would like to clear up in my mind and that is whether the original Durham bill carried the vast power that this bill carries.

Mr. O'HARA. In my opinion it did not. There was some provision on page 2 which gave him additional powers but not the broad powers that are contained in subsection 5.

Mr. BONNER. Did Mr. DURHAM testify before the committee for the bill as is?

Mr. O'HARA. He has not had an opportunity to testify to it as the bill was reported out—of course not—because it was amended and these additional powers, both subsection (b) was amended and subsection 5 as I recall it, was added. That was after we had several days of executive consideration and after the gentleman from Mississippi suddenly appeared with what I assume was the brain child of the Food and Drug Administration and the retail druggists association.

Mr. DONDERO. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield.

Mr. DONDERO. This is the fourth Durham bill and not the first one or the second one, is that correct?

Mr. O'HARA. I think that is correct. The first one we had hearings on was the bill as introduced; not the amended one which we have before us.

Mr. WILLIAMS of Mississippi. Mr. Chairman, will the gentleman yield?

Mr. O'HARA. I yield.

Mr. WILLIAMS of Mississippi. I just want to straighten the gentleman out on that. He knows I am not going to kowtow to Mr. Ewing or any of his subordinates. I just want to tell him that the amendment was worked up by the staff of the committee with my assistance, or worked up by me with the assistance of the staff of the committee, whichever way you want to put it, to carry out the purposes we thought the Committee on Interstate and Foreign Commerce wanted to accomplish.

Mr. O'HARA. I fear the Food and Drug people worked very closely with the staff—perhaps not with the gentleman—but they worked very closely with the staff.

Mr. Chairman, I hope this amendment will be adopted because it determines whether you want this administrative absolutism or whether you want to continue in the American way in this important problem.

The CHAIRMAN. The time of the gentleman has expired.

Mr. HARRIS. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I am opposed to this amendment. The gentleman from Minnesota [Mr. O'HARA] strikes at the very heart of this bill. This is the crux of the issue. It is the real issue before this Congress and before the American people.

It is a rather interesting thing when Oscar Ewing is being used as a whipping boy here. I will say to you if his name was not involved in this legislation you would not have a leg to stand on, and you know it. You drag out before this Committee the thing that you think will create the most prejudice against a piece of good legislation. I doubt if there is any Member of this House who has opposed Mr. Ewing in his proposal to socialize the medical profession and the health of our people.

Mr. HALLECK. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I yield to the gentleman from Indiana.

Mr. HALLECK. The gentleman knows my high regard for the gentleman from Arkansas. I have a letter here from the executive secretary of the National Association of Retail Druggists, whom I know and like very much. I suppose everybody had such a letter. He expresses support of the bill. But, in the final paragraph, on the first page, he says:

> The second purpose of the bill and the one of great immediate concern to druggists is to relax the present unrestricted provisions of law regulating the filling and refilling of prescriptions.

If that is of great concern to the druggists, then how can you say if this amendment were adopted it would strike at the heart of the bill?

Mr. HARRIS. Everyone is in accord with reference to the necessity, the imperative necessity of correcting the present law with reference to the refilling of prescriptions and of telephonic prescriptions. Everyone is agreed on that. The other issue is this one, which I repeat, is the crux and the real issue before this House. I said before that this is the issue; it is a fight between the commercial manufacturers of drugs and the retail druggists throughout the country as to what the best way and where the responsibility should be on safe drugs dispensed by prescription.

In all deference to everyone in this House, the manufacturers of drugs have raised a big bug-a-boo here about Oscar Ewing, and you are attempting to defeat a very worth-while cause that the commercial interests are against, by using what some would say is an unpopular Administrator to do that. Now, let us get the cards face up on the table. I think the membership is entitled to know. The gentleman from Maine [Mr. HALE] told you a moment ago what the facts were with reference to this legislation. Before I leave it, however, I would like to say to the gentleman from Indiana [Mr. HALLECK], if he will read page 2 of the letter from Mr. Dargavel he will observe that he devoted three paragraphs to this issue, in which he said:

> The sole opposition to the bill is from the manufacturers of drugs and their satellites. The Proprietary Association is the most active. The spokesmen of this organization argue that the authority to decide which drugs must be sold on prescription only should be lodged exclusively with the manufacturers despite the fact that the Federal Security Agency is charged with the enforcement of this important public law. Instead, the manufacturers wish to leave to case-to-case prosecutions for misbranding the question whether a manufacturer made a proper choice in restricting a drug to prescriptions or in deciding to have it sold over the drugstore counter.
>
> The burden of compliance falls upon the druggist as well as upon the manufacturer. We do not wish to be made criminal defendants or to have drugs on our shelves seized for the purpose solely of obtaining an authoritative decision whether the drug should in the future be sold on prescription only or should be over the counter. We believe that is the kind of question that should be settled in advance, and we have confidence that the Food and Drug Administration of the Federal Security Agency is competent to make the determinations. The bill provides the same safeguards against abuse of the administrative power that Congress provided in the Administrative Procedure Act after the most careful study of the question.
>
> The patent medicine manufacturers argue that H. R. 3298 involves life or death to them. We answer that failure to enact the bill will spell life or death for an untold number of people. Death can, indeed, result from the over-the-counter sale of many drugs. This bill is designed to prevent injury to the public health, and we believe that it should be passed at the earliest possible time.

Mr. BELCHER. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I yield to the gentleman from Oklahoma.

Mr. BELCHER. I do not know who Mr. Dargavel is.

Mr. HARRIS. He is executive secretary of the National Association of Retail Druggists.

Mr. BELCHER. I do not know who he is, but he does not speak for the druggists of the Eighth Oklahoma District, because I have had wires from them opposing this bill.

Mr. HARRIS. I appreciate the gentleman's position.

The gentleman from Indiana [Mr. HALLECK] brought up the letter of the executive secretary, representing the National Association of Retail Druggists, and that is the reason I referred to it. I assume he speaks for the 35,000 retail druggists throughout the country. Everyone to his own feeling.

The gentleman from Indiana asked a question a moment ago of the author of this amendment, to the effect that the original Durham bill did not have this provision which he proposes to strike out.

Let me say to the gentleman from Indiana and Members of this House, if you will turn to page 2 of this bill, you will see that language stricken out. That is in the bill proposed by the gentleman from North Carolina [Mr. DURHAM], and you will notice that language is much broader and had far-reaching consequence which this bill does not have.

In the course of the consideration of this legislation in the committee the gentleman from Maine offered some amendments. Those amendments would in effect do just what the gentleman from Minnesota proposes to do now. The committee adopted those amendments.

After their adoption and we began looking into the effect and result then we came to a determination that it would not do what was proposed originally and what the committee felt was necessary to correct or adequately adjust the Food and Drug Act; so the committee reconsidered the entire amendment that had been offered by the gentleman from Maine and we took the standards that were set up to tie the hands of the Administrator and provided them here in (a) (b) (c), (b) and (c) are the two paragraphs here, (b) being the one in controversy that sets a standard by which the Administrator must obviously act in accordance with the administration of this program. It ties the hands of the Administrator where he must follow the standard set up and consequently does not give him the broad unlimited authority that some would have you believe today.

Mr. EVINS. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I yield.

Mr. EVINS. The gentleman says in one breath that we give the Administrator authority and then in the next breath he says we tie his hands. If the pending amendment is adopted it will not be necessary.

Mr. HARRIS. No, it will not be necessary; but you will leave—and if the committee wants to do it, it is all right—you will leave to the authority of the commercial drug interests in this country to decide in all instances what is best for the American people and the health and welfare of the people. There is the crux of it today.

All these patent medicines are involved, and there is some confusion because of the technicality as to what this would do. But let me say to the gentleman again that this would have no adverse effect whatsoever on any accepted patent medicine that is on the market today.

Mr. SCRIVNER. Mr. Chairman, will the gentleman yield?

Mr. HARRIS. I yield.

Mr. SCRIVNER. It is a little hard for me to understand why you give a man such power as you say is given here and then tie his hands. Why give him the power in the first place?

Mr. HARRIS. For the simple reason that because of all of these new medicines and drugs that come on the market almost daily the committee felt there should be some determination by somebody as to whether or not they were safe drugs and should be dispensed by prescription or sold over the counter.

This is relief for the retail druggists who have the responsibility as much as the commercial industry in the determination of these drugs.

I will say to the Committee that I think it could very well be to the best interests of the American people if this amendment were defeated.

Mr. DOLLIVER. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I should like to discuss this matter objectively and dispassionately. I sat through the hearings on this legislation for a good many days. I believe I heard every word that was uttered about this legislation in the committee, both in public and private sessions.

It is not a simple piece of legislation and I am sure that some of you who have listened to the debate this after-

noon may be somewhat confused about it.

I would like you to know, first of all, that there are important parts of this legislation which are not controversial, and I use the word "important" advisedly. Those important parts are contained in the last part of the writing on page 5, beginning about line 21, and going over to about line 3 on the next page. They refer to the oral prescriptions and the refilling of prescriptions. That, really, is the important part of this legislation from the standpoint of the people who are affected by it.

Mr. MASON. Mr. Chairman, will the gentleman yield?

Mr. DOLLIVER. I yield to the gentleman from Illinois.

Mr. MASON. I would prefer that those things be called the sugar-coating to get us to swallow the part of the bill that most of us do not want.

Mr. DOLLIVER. We can rectify the situation to which he objects by adopting the amendment which is now under consideration by the committee. That is exactly what should be done.

Mr. MASON. I agree with that.

Mr. MORANO. Mr. Chairman, will the gentleman yield?

Mr. DOLLIVER. I yield to the gentleman from Connecticut.

Mr. MORANO. The distinguished gentleman from Arkansas said that if we adopt this amendment we would strike out the heart of the bill. Will the gentleman from Iowa comment on that?

Mr. DOLLIVER. I disagree with the gentleman from Arkansas. This is not the heart of the bill. It is one of the issues, to be sure, but it is not the most important part of the bill from my standpoint at least.

What is the argument about with reference to the amendment offered by the gentleman from Minnesota [Mr. O'HARA]? It is whether you are going to turn over to the Social Security Administrator, Mr. Ewing, at the present time—but I would not care whether it was Mr. Ewing or someone else—certain authority to proscribe certain drugs.

I want to be fair about Mr. Ewing. I know from his testimony before the committee that he did not ask for this authority. I heard him say so in the hearings. He has not asked for this power. But he has asked, and everybody who is interested in this legislation is asking for those parts I referred to in the beginning of my statement, clarification of the situation with respect to oral prescriptions and with respect to refilling of prescriptions.

We are now arguing about another matter which, to be sure, is important. In my honest opinion, we ought to adopt the amendment offered by the gentleman from Minnesota [Mr. O'HARA] because thereby we would get a bill which would be acceptable, as I see it, to most of the people who are interested in this and would continue the kind of protection to the general public which it now enjoys under the Food, Drug, and Cosmetic Act.

If it should transpire in the future that what we do in adopting the O'Hara amendment is not satisfactory; if it does not complete the task, why, of course, the Congress will be in session, there will continue to be a Committee on Interstate and Foreign Commerce to take up this matter. We can rectify the situation.

But as of now it is my considered judgment, and I hope the considered judgment of a majority of this House, that we should adopt the O'Hara amendment, and pass the bill in the form that it ought to pass. We will do no one harm in so doing—as we might very well do if it were passed without the amendment.

The CHAIRMAN. The time of the gentleman from Iowa has expired.

Mr. THORNBERRY. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I would like to discuss the pending amendment as calmly as possible.

There are two reasons why I am opposed to the O'Hara amendment. In the first place, it leaves the retail corner druggist in the same position that exists today under the present law. Under the present law he does not know whether the drugs that he sells over the counter are in violation of the law until the Food and Drug Administrator comes and seizes the goods on his counter or files a criminal complaint against him. You can realize that when goods are seized on his counter his standing in the community is hurt. The second reason I am opposed to the O'Hara amendment is that, in my opinion, it does not give the protection to the public which is needed. We hear the cry of socialism and of strong centralized power, but the Food and Drug Administration has the same power given to it in this bill, on habit-forming drugs and on new drugs. Nobody has said anything about those powers, but when we come to try to correct the situation about drugs that are dangerous to human beings, then we hear that it is too broad a grant of power. What are we going to do about people who somehow or other are entitled to protection against dangerous drugs? Are we going to leave it to a system that the Food and Drug Administrator cannot correct until he comes and seizes the goods or files a criminal complaint? Are we going to correct the situation by a case by case determination? That is what the O'Hara amendment would do.

Mr. WILLIAMS of Mississippi. Mr. Chairman, will the gentleman yield?

Mr. THORNBERRY. I yield to the gentleman from Mississippi.

Mr. WILLIAMS of Mississippi. As I understand, there are 35,000 different drugs on the market. This means that if you adopt the O'Hara amendment the only way the druggist can be certain that he is not selling a prescription drug over the counter is after 30,000 lawsuits have been finished.

Mr. THORNBERRY. That is right. But we do not know how many of these dangerous drugs will be sold over the counter and what are safe for human consumption.

Somehow the Food and Drug Administrator should have the same power with reference to dangerous drugs that he already has with reference to habit-forming drugs and new drugs. Let us not overlook the very point that we are trying to protect the people of America against the use of dangerous drugs. If you adopt the O'Hara amendment, you will leave the retail corner druggist and the pharmacist at the mercy of the Food and Drug Administrator who comes in and seizes his goods and files a case-by-case action in court, either of which is dangerous to him.

Now, there have been a great many statements made here about the retail druggist and how he stands. When the committee report was published I sent a copy of it to every druggist and pharmacist in my district, calling attention to the majority and the minority report, asking them to read them carefully, and I heard from no one of them as being opposed to the bill. Strangely enough, most of the people I heard from were pharmacists who are also druggists, who feel that a change should be made in the law as it exists today. They protest that the present law leaves them at the mercy of either having their goods seized or being hailed into the Federal district court and tried on criminal charges.

Mr. BECKWORTH. Mr. Chairman, will the gentleman yield?

Mr. THORNBERRY. I yield to the gentleman from Texas.

Mr. BECKWORTH. As I said a moment ago, beginning on page 97 of the hearings, you can find more than 100 cases of these small druggists who doubtless, in most instances, innocently were selling drugs. This seeks relief from the kind of situation that the gentleman has just described, nobody knowing about it until after they have committeed the offense.

Mr. THORNBERRY. That is exactly right. And there is not a Member here who will not say that the backbone of small business in our community, for which we plead so eloquently at times, is the retail corner druggist and the small pharmacist who is trying to serve his community. Certainly we should relieve him of the fear of prosecution brought about by an innocent transaction.

Mr. BEAMER. Mr. Chairman, I move to strike out the last word, and rise in support of the amendment.

Mr. Chairman, our very good friend has just given you the "wolf, wolf" cry We have been hearing it so many times from so many people on both sides of the aisle that I hesitate to use it, but I am going to have to yell "wolf," but another kind of wolf.

Let us analyze this situation a bit. There is a system that has been slow in building up, but I tell you it is going to be still slower in deteriorating and much slower in being torn down. I am referring to this system as contrary to the one that you and I want to keep for our own individual initiative, for our own individual responsibility.

Some very good friends of ours, whose opinions I respect and I know you respect, have said very loudly, and I can yell just as loud as they can, if you wish, that the druggists are supporting H. R. 3298.

If the people of this country begin to think for themselves, even including the

druggists, the drug manufacturers, and you and I, if we begin thinking for ourselves and forgetting what the executive secretary of some association, who has some ulterior motive, says, then we are going to get some place.

I did the same thing my good friend from Texas did. I wrote back to the druggists in my district. I know many of these people and have talked to them. I said, "All I want you to do is read the bill and read the committee report." Invariably they wrote back, "We want the refill provision, but for goodness sake, don't help to build up this system that has been engulfing us all the time."

This is called the Durham bill. Read your bill. It has been struck out by the committee. I am sorry, but the estimable gentleman whose name appears on this bill has had a serious operation and is unable to be reached. I have a feeling that with all of his good judgment, which I have heard expressed here today, he would say, "No, this is not my bill."

Mr. BECKWORTH. Mr. Chairman, will the gentleman yield?

Mr. BEAMER. I yield to the gentleman from Texas.

Mr. BECKWORTH. I happen to know the position of the gentleman to whom the gentleman has referred on this very part of the bill. Just prior to the time he left for his operation, he came to my office, and I am sure he went to at least one other office, and he said to me that nothing worse could happen to this legislation than to take out this part of the bill.

Mr. BEAMER. I think it would be very fine if that were a matter of record. So many times today we have asked, "Is this a part of the record?"

I repeat the druggists do not want to sell their birthright for a mess of pottage. They do want a corrected refill provision. You open the door a little tiny bit for some of these bureaucrats—and I will name the Federal Security Administrator—you open the door a little bit and he will walk right in. I said this to the trustees of the American Medical Association and I say it to you today. I can give you an illustration about which you will be hearing. You people from New York State, Tennessee, Florida, and Indiana, you have had experience with this gentleman. You give him an inch and he takes a mile. I am not saying it about the present man because he may be gone tomorrow, but even so this principle still exists.

I say to you it is going to be necessary for you and me to stand up and fight even this little tiny thing. We are going to have to stand up and have the same backbone as these socialistic dreamers. They are doing it. They are not hesitating for a moment, they are not stopping. They are unceasingly on the job. You and I are going to have to stiffen our backs and say, "No, sir. Here is one place we will stop. We will go no further." That is the thing I am trying to impress upon you.

There is one other point I am trying to bring to your attention. Have you heard this expression, "directed judgments"? This committee that the Administrator can set up, supposedly of people who are experts and qualified by experience and training, he can pick, and I challenge you, they have been picked by this administration to choose the proper words and give the proper decisions that will fit the interests of this system that they are trying to build up.

Yes, I am yelling "Wolf," too, and I mean it seriously now. I do not like to yell in this fashion because someday we will have yelled "Wolf" so often that the real wolf will come and not be recognized, but today this is a truly important issue.

Mr. MARTIN of Massachusetts. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I take this time just for a minute to find out the program for the rest of the week, if I may.

Mr. McCORMACK. If the gentleman will yield, I think that is a very pertinent question and of interest to all Members.

If this bill is disposed of and the rest of the program I had announced for last week is disposed of by tomorrow night, we will go over until Monday. The other bills are the investigative powers outside of continental United States by the Interstate and Foreign Commerce Committee. I do not think that should take very long.

Then, there are two bills from the Armed Services Committee. I understand they are unanimously reported.

There is one bill from the Foreign Affairs Committee.

The only thing that I can see which would hold up action going over from Thursday until Monday would be the unnecessary continuation of the present bill.

Mr. MARTIN of Massachusetts. I thank the gentleman.

Mr. WILLIAMS of Mississippi. Mr. Chairman, I rise in opposition to the amendment.

In order for the House to understand the real difference between the committee's approach to the problem of determining prescription drugs, and that approach which is offered by the gentleman from Minnesota [Mr. O'HARA] in his amendment, I think it might be well for the House to understand, insofar as possible, exactly the problem facing the retail druggist. In understanding that I feel that the House will be in a better position to determine the best vote to cast on this amendment.

I have before me two drugs. These are manufactured by different manufacturers, yet they are identical in chemical make-up, they are identical in quantity, they are exactly the same product. One product is manufactured by the Davies-Rose Co., of Boston, Mass. On this drug—this is quinidine sulfate—you will find this legend:

Caution: To be dispensed only by or on the prescription of a physician.

Here is the same drug manufactured by the Eli Lilly Co., of Indianapolis. There is no legend on this drug.

Mr. O'HARA. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Mississippi. In just 1 minute.

On this drug is written the simple language:

Adult dose: One tablet as directed by the physician.

I yield to the gentleman from Minnesota.

Mr. O'HARA. The gentleman has used this exhibit repeatedly, and, of course, I am familiar with it. Actually, my amendment does not affect section 4, which imposes perhaps some additional responsibilities on the druggist. The gentleman would admit that, would he not?

Mr. WILLIAMS of Mississippi. Not exactly.

Mr. O'HARA. Furthermore, under the present law as it exists today if either of those bottles is mislabeled, the Administrator has every authority under the law to prosecute criminally and civilly.

Mr. WILLIAMS of Mississippi. The gentleman is right up to a point. But in order to see that these prescription drugs are labeled uniformly under your amendment, it would require 30,000 seizures and 30,000 lawsuits on the part of the Administrator.

Mr. HALLECK. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Mississippi. I cannot yield further; I want to complete my statement. If I have time later, I will yield.

Here are two more drugs, identical drugs. On one you will find the prescription legend; on the other you will not find the prescription legend but, instead, the statement:

Average adult dosage, one tablet repeated at intervals of 3 or 4 hours.

This drug is phenacetin. When the retail druggist gets an order from a customer to sell him half a dozen tablets of this drug over the counter and he picks up that bottle and sees that phenacetin manufactured by the Chase Chemical Co. is sitting beside the phenacetin manufactured by Sharp & Dohme—one carrying the prescription legend and the other carrying the dosage label—he does not know whether he is violating the law if he sells that drug over the counter or not. That is what we are seeking to eliminate in this bill.

As to what the amendment offered by the gentleman from Minnesota [Mr. O'HARA] would do—and I may say right here that I know his amendment was offered in good faith; I know the gentleman has worked hard and long on this bill and that he seeks the same as we—relief for the retail druggist and certainty and protection for the public—at the same time I fear that his amendment will not accomplish the end that he desires. He is just taking a different road trying to get to the same destination as we are. The only trouble is that there is a bridge washed out on his road and he cannot get through.

We must put the authority somewhere to determine which drugs are to be considered prescription drugs and which drugs may be sold over the counter.

The druggist, even with the O'Hara amendment, is left right where he was to start with, because in the case of two

manufacturers of the same drug, one manufacturer says by inference that it is a dangerous drug and the other manufacturer says that it is not a dangerous drug. Who is going to determine which manufacturer is right?

The CHAIRMAN. The time of the gentleman from Mississippi has expired.

Mr. WILLIAMS of Mississippi. Mr. Chairman, I ask unanimous consent to proceed for five additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. WILLIAMS of Mississippi. The only way that we can determine which manufacturer is right in such a controversy is to place the responsibility on someone to determine if—for instance—phenacetin, whether manufactured by Sharp & Dohme or some other chemical company is a dangerous or prescription drug. I think there is only one way we can do this, and certainly no other solution was offered to the committee. The general definition of drugs which was offered by the gentleman from Minnesota does not accomplish the purpose. If we do not put that authority in somebody we are not going to help the retail druggist out of the dilemma in which he finds himself because of the confusion relating to prescription drugs.

Mr. HALLECK. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Mississippi. I yield.

Mr. HALLECK. The gentleman referred to Eli Lilly & Co. They are not in my district, but they are in my State. They are a reliable concern.

Mr. WILLIAMS of Mississippi. They are a very reliable concern. They are one of the best.

Mr. HALLECK. The gentleman read from that label and said, if I remember him correctly: "Adult dosage, one tablet," but the gentleman did not read that it also says: "To be prescribed by a physician," or words to that effect. Now, that follows Lilly's policy. What is the matter with that?

Mr. WILLIAMS of Mississippi. If the gentleman read the label on the other drug put out by Davis Rust & Co. he finds this: "To be dispensed only by or on the prescription of a physician." On the Lilly bottle it reads: "One or two tablets as directed by a physician." There is a lot of difference between the two legends.

Mr. HALLECK. On the Lilly bottle?

Mr. WILLIAMS of Mississippi. On the Eli Lilly Co. bottle the legend is in this language:

One or two tablets as directed by a physician.

To the druggist, that means uncertainty, which is the thing we are attempting to eliminate through this bill.

May I say to the gentleman from Indiana that I have had a lot of practical experience in a drug store. As has been said on the floor before, my father was one of the old-time country retail druggists of the State of Mississippi. I have seen the confusion that comes about as a result of these different labels on prescription drugs.

What the druggist is seeking is certainty. I think I know what he wants and needs, and I believe we are going down the right road toward giving that relief with the committee bill.

Now, if the O'Hara amendment is adopted, Eli Lilly & Co. may decide that the drug phenacetin, for instance, comes within the definition of a prescription drug as outlined in the O'Hara amendment. Another drug manufacturer might say that it does not come within that category.

Where does that leave the retail druggist? The only way that the retail druggist can be certain is to have that drug seized, the retail druggist hauled into court, have his drug seized and go through a long, costly process of litigation before some kind of definite determination is made. With 30,000 drugs you can see the impracticability of that approach. The Administrator may simply say that phenacetin is a prescription drug, if he so finds on the basis of testimony of experts as provided in the committee bill and phenacetin, whether manufactured by Eli Lilly, Sharp & Dohme, Squibb, or any other manufacturer, becomes a prescription drug.

If we leave it up to the O'Hara amendment the druggist will need to have a lawsuit to determine whether phenacetin manufactured by Sharp & Dohme is a prescription drug. After he gets that one decided, he will have to have a lawsuit over whether the same drug manufactured by Eli Lilly & Co. is a prescription drug. When he gets that one settled he will have to go on right down the line with the same procedure followed in the case of every company that makes that drug.

Mr. BROWNSON. Mr. Chairman, will the gentleman yield?

Mr. WILLIAMS of Mississippi. I yield to the gentleman from Indiana.

Mr. BROWNSON. In the first place, I do not think the gentleman has been a practicing druggist.

Mr. WILLIAMS of Mississippi. I am not a practicing druggist. I say that I have had practical experience in a drug store. I have jerked soda, hopped cars, and have done about everything but fill prescriptions.

Mr. BROWNSON. Eli Lilly does not sell soda fountain supplies. Their policy is to sell for physicians and for prescription use alone. That is why they indicate one tablet as prescribed by a physician. Does the gentleman want to go further and prescribe how the physician is going to use these drugs in addition?

Mr. WILLIAMS of Mississippi. If the gentleman will get himself a box of Eli Lilly's 5-grain aspirin tablets, he will see that exactly that same legend is put on a box of 500 5-grain aspirin tablets. Why should they put aspirin tablets "One to two tablets an hour as directed by a physician," when the drug is innocuous?

Mr. BROWNSON. Because at the present time Eli Lilly operates on a sales policy of selling for physicians and for prescription use only.

Mr. WILLIAMS of Mississippi. We are not interested in the policies of any individual company. We are interested in protecting the public and providing certainty for the druggist.

Mr. BROWNSON. We are certainly interested in them and I resent the impugning of that reputable firm here today.

Mr. WILLIAMS of Mississippi. The gentleman knows better than to say that. I know that the Lilly Co. is one of the best drug manufacturers, and one of the most ethical. He knows that I am not directing any criticism at that firm. I am merely stating facts.

Mr. HINSHAW. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I have deliberately moved to strike out the last word instead of rising for or against the pending amendment.

Mr. Chairman, as I told the members of this committee on yesterday, I was not privileged to sit through all of the hearings on this bill nor through all of the hearings in executive session and the consideration of the bill in executive session because of conflicting committee assignments, hence I am somewhat in the same position as most of the members of this committee, only my position is slightly improved by the fact that I was there in committee some of the time.

Mr. Chairman, I think it is quite evident to the members of the Committee of the Whole that the debate here is just about the same as it was in the committee itself. It is just one of those questions that is hard to resolve, and I think that the members of the Committee of the Whole understand, from the telegrams that they have received from retail druggists and from pharmaceutical houses and others, that there is wide interest, and hence wide expression on the part of those people for and against certain provisions of this bill. As a matter of fact, from where we sit it appears to me that this is a piece of legislation that is about to be written by the lobby, and there certainly is not a member of my committee who has had an opportunity to hear any more about them than I, and yet you would act on behalf of the telegrams and letters you have received.

I want to suggest to you one thing. Forget these letters and telegrams that you have received and realize that there are special interests involved here, each one trying to protect its own position, and try to arrive at some solution on the basis of sound reasoning. I will tell you why this committee, in my opinion, was not able to arrive at a unanimous conclusion. I think the reason they were not able to arrive at a unanimous conclusion was because of the lack of strong participation in the consideration of this legislation by the American Medical Society and others who prescribe these drugs. We did not have their advice, to the best of my knowledge, except some belated word that came after the hearings and the executive session consideration, even after the writing of the committee report was concluded.

I think we should have had that advice before we brought this bill here, because certainly the complications of

it are almost too great for any one individual to absorb and come up with a proper judgment.

I think in order to arrive at a right conclusion you are going to have to disregard the letters and telegrams that came to you and think solely and exclusively of the public interest. That is my humble opinion. I hope you will do just that. I am in the same position you are. I know that I am going to have to operate exclusively in the public interest to the best of my ability.

Mr. HARRIS. Mr. Chairman, will the gentleman yield?

Mr. HINSHAW. I yield to the gentleman from Arkansas.

Mr. HARRIS. May I say that I share the sentiments expressed by the gentleman. I would go further and say that the members of the committee sought the information from the American Medical Association, those who would be in charge of issuing the prescriptions.

Mr. HINSHAW. Exactly. We did seek that information and it was not forthcoming, certainly in time to do any good so far as the consideration of this bill was concerned. Nobody can deny that.

Mr. O'HARA. Mr. Chairman, will the gentleman yield?

Mr. HINSHAW. Yes, if the gentleman can deny it.

Mr. O'HARA. We had a communication from the American Medical Association.

Mr. HINSHAW. When?

Mr. O'HARA. While the bill was under executive consideration. The gentleman was not there. It was on June 15.

Mr. HINSHAW. The bill had been written by June 15.

Mr. O'HARA. No, it had not been reported out.

Mr. HINSHAW. It had not been reported out, but it had been written.

Mr. WOLVERTON. Mr. Chairman, will the gentleman yield?

Mr. HINSHAW. I yield to the gentleman from New Jersey.

Mr. WOLVERTON. In answer to the explanation given by the gentleman from Minnesota, I think he is in error. If he would look at the minute book of the committee he would see that at no time did the American Medical Association ever indicate to this committee of ours, opposition to this bill. We sought time after time to have someone representing that organization come before us. I did it myself. It was impossible to get anyone from that organization to appear before our committee. They finally put it off with the idea that it would go before the convention in Atlantic City. The convention was held, and they adjourned without any action whatsoever being taken on this matter.

Mr. BECKWORTH. Mr. Chairman, will the gentleman yield?

Mr. HINSHAW. I yield to the gentleman from Texas.

Mr. BECKWORTH. As I recall, some representative of the American Medical Association was even in the committee room part of the time. He was asked whether or not he would appear, and declined to do so. The committee sought with great diligence to get an accurate expression of the views of the association.

Mr. JUDD. Mr. Chairman, will the gentleman yield?

Mr. HINSHAW. I yield to the gentleman from Minnesota, who, as a physician, ought to know more about this than anybody else around here.

Mr. JUDD. I cannot testify on this particular matter, but I should like to have the benefit of the gentleman's independent judgment as to the merits of this amendment, regardless of lobbies.

Mr. SPRINGER. I would, too.

Mr. HINSHAW. My personal opinion is that it is not as bad as some people would make it out, and with the word "efficacious" stricken out of it by the amendment of somebody here a little while ago, it is perfectly all right. I do not see anything wrong with it as the bill now stands. I am not going to get worked up about Oscar Ewing, either.

Mr. LEONARD W. HALL. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, it is too bad this bill comes before us today in the form it does. The real question which interests the druggists is the prescription part of the bill. If we could only have passed on that, it would have come out of our committee unanimously, and I think it would have passed this House on the Consent Calendar.

I know there is an association running around saying the retail druggists want this particular part of the bill that the O'Hara amendment strikes out. I have a number of independent druggists in my district, and I have not heard from one of them with respect to that provision of the bill contained in the O'Hara amendment.

I admit there is some confusion. The gentleman from Mississippi has again brought before us bottles of drugs which we saw during the hearings on the bill. I can conceive that maybe our retail druggists are a little bit confused. But I ask you, Are we going to give this grant of power because someone is confused? I have been in this body for about 12 years. I have seen a great amount of confusion on different subjects but I have never seen any of that confusion eliminated by putting more power into the hands of any administrator in Washington. That is just exactly what some members are trying to do here today.

Let us consider the problem presented by these bottles of drugs further: Under the present law the Administrator can correct that today. No one can deny that. But he does not want to go into court and get an injunction. He does not want to proceed by criminal proceedings. He wants to get an administrative court so as to make his job that much easier. Under section 4 of the bill as we have it before us today the Administrator is given even more power to correct the situation on the labels as described by the gentleman from Mississippi.

I am sorry that when we get any piece of legislation we have to go down the same path and admit that there is only one answer, namely, to give somebody more power in Washington.

Apparently we have reached the point where we do not trust our big manufacturers.

Consider the case of aureomycin. Somebody mentioned that the other day. I know a little bit about it. Millions of dollars were spent before that drug appeared on the market. Do you think those manufacturers who are now making great profits are going to put anything on the label of that drug which is not true? For selfish reasons alone they would not. I think we still have to have a little faith in them.

Most of our States have laws on their books with respect to the dispensation of drugs. Have we reached the point where we do not even trust our State governments? To me this in part is a good bill but let us not use the good part of the bill to put more power in the hands of some bureaucrat in Washington.

If we pass this bill today in its present form, and I remind my colleagues that many Members get up on the floor each year and say that we should not give any more appropriations or larger appropriations to heads of bureaus or commissions, I repeat, if we pass this bill today Oscar Ewing is going to come before us next year and is going to say, "I have to list all of these drugs." I think he will have a perfect right to say that he will have to have a number of new employees to carry out the job that Congress has given to him under this bill. Let us not cripple a good and necessary piece of legislation by adding to it this uncalled-for grant of power.

I trust the O'Hara amendment passes.

Mr. KEATING. Mr. Chairman, will the gentleman yield?

Mr. LEONARD W. HALL. I yield.

Mr. KEATING. There has been some discussion about the attitude of the medical profession. I have had nothing from the American Medical Association but I have today received a telegram from the Medical Society of the State of New York saying:

> The chairman of the legislative committee of the Medical Society of the State of New York has instructed me to respectfully request your opposition to the bill, H. R. 3298, so long as it retains section (B).

Mr. LEONARD W. HALL. I think when we speak of the attitude of the American Medical Association and when we say they have not taken any action or expressed any attitude we mean at their meeting at Atlantic City where they met as a national body they did not take any action.

Mr. KEATING. They did not take any official action of which I am advised but I assume perhaps the gentleman has received a telegram similar to mine to the effect that the New York Medical Society is definitely in opposition to that section (B). Certainly I think that is one factor which we ought to take into consideration because presumably the medical society is trying to look out for the interests of the general public.

Mr. LEONARD W. HALL. I thank the gentleman.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. HESELTON. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, it is not pleasant for me to oppose an amendment proposed by my colleague and friend the gentle-

man from Minnesota [Mr. O'HARA] and supported by my other friends and colleagues from New York, Indiana, and Michigan. But I think it is incumbent upon some of the members of the committee who reported this bill out as a sound piece of legislation, to try at least to state the reasons why the pending amendment should not prevail. I suggest that the gentleman from California [Mr. HINSHAW] who spoke a few minutes ago, made a very sound, constructive suggestion to the membership here. As far as I am concerned, I do not see the dangers that others profess to see in this section of the bill.

In the first place, we have a precedent for it. It is entirely consistent with the act of 1938, when the Congress gave this Administrator authority to list habit-forming derivative drugs named in section 502 (d). Incidentally, I do not think anyone would suggest that that authority has been abused.

In the second place, it has been repeatedly stated that if we adopt the amendment offered by the gentleman from Minnesota [Mr. O'HARA], and I do not think he will dispute this, that inevitably the situation will be left exactly where it is. It has been suggested that there is wider power. What is it? It is the power to prosecute criminally. It is the power to seize drugs. It is power to enjoin. I think everyone recognizes that there is both uncertainty and confusion in this picture; and certainly if that is so, a vote to adopt the amendment offered by the gentleman from Minnesota does nothing to remove that uncertainty and confusion.

I hope we will not forget that we removed from this bill in the consideration of it earlier—and I think it was wisely taken out—the part relating to efficacy. So we are dealing now only with the question of safety; safety for the American people who use these drugs. That is all there is in this.

If you are going back to the question of letting criminal procedures and seizures and injunctions determine it, you have 80 district courts in this country. You know and I know, with the jury system, it is utterly impossible to insure any consistency through that procedure. You will have one case decided one way and another decided in another way, and we would never have an end to it.

Moreover, there is the question of delay involved in litigation. In one of the district courts recently there was a drug, a hormone case, which contributed to the growth of cancer. That was held up in litigation for over 2 years. Meantime, irreparable damage was done to the people of this country who mistakenly used that drug.

I say it is a question of public welfare. It is a problem of public health. When a committee, by a majority of 19 to 4, after days of hearings, after almost a full week of executive sessions, comes to you with a recommendation such as this, I hope you will not lightly turn it aside, because action is needed.

Mr. O'HARA. Mr. Chairman, will the gentleman yield?

Mr. HESELTON. I yield.

Mr. O'HARA. The gentleman refers to the drug which contributes to cancer. Does the gentleman admit that under this bill you have the same long drawn-out proceedings?

Mr. HESELTON. I doubt it.

Mr. O'HARA. Greatly magnified under this bill?

Mr. HESELTON. You know and I know that only a small fraction of the 30,000 mentioned in the list will be included in the list. In Canada they have a list with 18 drugs on it. With any degree of intelligent action we would have clear action in a reasonable time. Instead of projecting this over 30,000 cases, the gentleman from Texas [Mr. BECKWORTH] pointed out that in the hearings we had 140 cases between December 28, 1943, and April 1, 1951. I do want to do away with the tortuous case-by-case procedure. I do not want our people dragged into court and fined and given suspended sentences or imprisoned or enjoined or have their property seized because they do not know whether they are now safely selling drugs over the counter. They are justly entitled to all the certainty possible. I know the public that is using these drugs has some rights here today. I hope they will be recognized.

The CHAIRMAN. The time of the gentleman from Massachusetts has expired.

Mr. BECKWORTH. Mr. Chairman, I ask unanimous consent that all debate on this amendment and all amendments thereto close in 20 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

Mr. AUGUST H. ANDRESEN. Mr. Chairman, I object.

Mr. BECKWORTH. Mr. Chairman, I move that all debate close in 20 minutes.

The CHAIRMAN. The question is on the motion.

The question was taken; and on a division (demanded by Mr. AUGUST H. ANDRESEN) there were—ayes 90, noes 19.

So the motion was agreed to.

The CHAIRMAN. The Chair has a list of names of the Members seeking recognition. The time will be divided equally between them and that will give each Member about 1½ minutes.

The gentleman from Wisconsin [Mr. KERSTEN] is recognized.

Mr. KERSTEN of Wisconsin. Mr. Chairman, as I understand the present bill, without the amendment it would be incumbent upon the Administrator to decide what drugs could be prescribed and those that could not be prescribed; in other words, he would have the responsibility of that rather very important function. It is true that there are a certain number of difficulties and there may be uncertainties in the present system, but in my humble opinion we are not solving them by putting this power in the hands of an administrator. I should like to make this short analogy: Suppose, for example, we were to put into the hands of an administrator the decision of what constituted the practice of medicine, in other words, an analogous field. Under the present system that question is determined by the courts, but if we were to put it into the hands of an administrator to determine what constituted the practice of medicine you would then be concentrating similar power in a Federal bureau. In my opinion a Federal administrator has not got the angelic mind he would have to have in order to do the things that the proponents of the present bill say he would have to do. In my opinion, with all of its difficulties the present system is superior. It is more in conformity with the facts, because you cannot take a considerable number of drugs and adopt a uniform rule for them. If a mistake is made by the Administrator the effects are Nation-wide.

The CHAIRMAN. The Chair recognizes the gentleman from Tennessee [Mr. EVINS].

Mr. EVINS. Mr. Chairman, on the whole, I think the committee has done a very good job insofar as two parts of this bill are concerned. However, I feel that the third section, section (B), is very controversial, and that it is neither necessary nor desirable. My objection to section (B) does not come about because I am representing any patent-medicine company or any special interests, as some may here have implied. I know of no drug-manufacturing company in my district.

My objection is based upon the additional authority to be here created and granted. There is already an existing body of law sufficient to take care of the situation. The public interest is already well served. There exists the Food and Drug Administration. We have the Food and Drug Administrator, a large body of laws, with authority to confiscate dangerous or deleterious drugs and to take them off the market. We have the Federal Trade Commission, which has authority to proceed against firms which may engage in unfair methods of competition or mislabeling, false advertising, or for making false and misleading statements, or engaging in misrepresentations. Adequate protection is thus afforded the public in this regard and no new authority is needed. I feel that there is a sufficient body of law at the present time, without giving additional authority to some administrator whereby a "black list" or "white list" of approved drug items might be set up. We might have a situation where the Administrator could say, "We will approve your product," and this approved product would be on the "white list," or the Administrator could say "I will not approve your drug for sale except by prescription," therefore this product would be on the "black list," as far as the sale over the counter is concerned. I do not think that situation should exist. Unless the O'Hara amendment is adopted, such a situation could develop.

It occurs to me that ample authority already exists both through the Federal Trade Commission and the Food and Drug Administration to cope with the situation concerning which section (B) of the bill is designed to afford protection. The authority proposed might well be properly administered. On the other hand, it could be misabused or abused.

I think existing authority is quite sufficient and that section (B) is not needed, and, therefore, that the O'Hara amendment should be adopted.

The CHAIRMAN. The Chair recognizes the gentleman from Idaho [Mr. WOOD].

Mr. BURDICK. Mr. Chairman, I ask unanimous consent that the time allotted me may be given to the gentleman from Idaho [Mr. WOOD].

The CHAIRMAN. Is there objection to the request of the gentleman from North Dakota?

There was no objection.

Mr. WOOD of Idaho. Mr. Chairman, several times the question has come up this afternoon as to why the American Medical Association has not appeared on one side or the other of this bill. I do not know why. I have not talked with that organization. I might point out that this is a drug bill, not doctor's bill. There is a National Association of Druggists, and, of course, they are the ones that should appear on a druggist's bill. I might also say that the experience of the American Medical Association with this particular Administrator has not been too happy in the past.

I have practiced medicine for 47 years. My opinion regarding this bill should be worth some attention.

How strange that medicine is the only one of the so-called learned professions about which every Tom, Dick, and Harry, and their wives, feel themselves perfectly competent to render expert opinions on almost every phase of that art and science.

Even more baneful is the fact that governmental bureaucrats also feel the urge to do something to help the lot of the supposed down-trodden and long-suffering public, writhing under so-called inadequate medical care, in spite of the fact that America is the Mecca of medical accomplishment, toward which the eyes of the world are turned, and also where medical care is more adequate than in any other country in the world.

This bill proposes to give a bureaucrat the authority to specify a list of so-called dangerous drugs and promulgate the rules under which they may be sold, or prescribed by physicians. Would you not feel that the physician through his national organization and its council on pharmacy and chemistry should be the authority to prepare such a list, and that the physicians themselves, through their national organization, should be the ones to prescribe the rules under which they may be used?

The Council on Pharmacy and Chemistry has investigated thousands of drugs in the past 40 or more years. They are the ones who have already gotten together such a list, and they have been sending that list to physicians for that length of time. Many of the States have followed the lead of this organization, and have promulgated lists of dangerous drugs to the pharmacists, and have forbidden their sale without a prescription.

And the law is working perfectly in the States where it is applied. If the druggist sells such drugs without a physician's orders, he is liable to the law for whatever trouble originates through such sale, and is directly liable to the State itself for the violation of the law. My experience with pharmacists in the past 47 years is that they are a group whose personal and professional standing is as high as that of any other profession. They are not potential lawbreakers.

Even in the States which do not yet possess this law, the remedy can be in the physician's hands, if he cares to use it. Long before Idaho passed the abovementioned law, it was my custom to write on the bottom of the prescription for one of these potentially dangerous drugs, the simple phrase: "Nonrepetatur," usually abbreviated to "Nonrep." A pharmacist is bound by all the rules of his profession not to refill that prescription, and I have never known or heard of a transgression of that rule.

As an illustration of how difficult it is to determine the correct answer to this problem, and how tragic it would be to have some ill-informed bureaucrat promulgate the rules for their use, as well as to tabulate the dangerous drugs, may be mentioned the fact that even a simple and harmless drug may be potent for harm under conditions which could only be determined by the physician in actual attendance on the patient. Even such simple things as salt, which could never be classed in that category, might shorten life in a case of dropsy, even in the amounts customarily used at the table.

Aspirin is not a dangerous drug, yet I cannot take even one tablet without vomiting. Penicillin is not generally classed as one of the more dangerous drugs, yet one of our most valued Republican Congressmen is in the hospital right now suffering from a severe allergy from even a small dose.

What then should be done with this bill? My own feeling is that it is about as useful as two thumbs on a hand would be. Pharmacists are already following the first section, and have been for years, and section 2 is impractical, or even foolish. Whatever is not useful and practical in legislation is harmful. Therefore, I feel it should be voted down.

I do feel, however, that the States which have not yet placed the dangerous drugs statute into effect should be urged to do so, through the force of public opinion, and through petitions sent to State legislatures by physicians' and pharmacists' National and State organizations.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. BENNETT].

Mr. WOLVERTON. Mr. Chairman, if the gentleman will yield, I ask unanimous consent that the time allotted to me be yielded to the gentleman from Michigan [Mr. BENNETT].

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. BENNETT of Michigan. Mr. Chairman, the effect of the O'Hara amendment is relatively simple. What it does is to legalize the regulations under which the Food and Drug Administration has been operating in this field for a period of years. Section (B), as set forth in the O'Hara amendment, substantially embodies the terms of the present regulations. What is wrong with that, and why does the Food and Drug Administration want it changed? Simply this: Here is the procedure they are obligated to follow at present. If a drug manufacturer dispenses a prescription drug on a nonprescription basis, which Food and Drug feel is dangerous, they proceed against the manufacturer in several ways, either to prosecute him criminally, proceed against him by injunction, by enjoining him from further manufacture, or by confiscation, or by any combination of those remedies. Now what about the case of the druggist? Under this system if the retail druggist sells a drug in accordance with the label put on it by the manufacturer, if he acts in good faith, he is not subject to prosecution, even though the drug manufacturer would be. All they can do is to confiscate the drugs. If they confiscate his drugs, he has his recourse against the manufacturer. This is rational procedure.

But here is what the Administrator wants to do. He does not want to give the manufacturer or the druggist his day in court. The burden of proof is on the manufacturer or druggist. They must go into court and show that the drug is actually safe without a prescription. The Administrator wants an easier way. It is more difficult to give a man his day in court with the presumption in his favor than to proceed by administrative regulation, which provides no presumption for the citizen.

But it is safer and wiser to pursue a different course. Let us stay on the safe side by adopting this amendment.

The CHAIRMAN. The Chair recognizes the gentleman from Texas [Mr. ROGERS].

Mr. ROGERS of Texas. Mr. Chairman, I have listened with a great deal of interest to this heated debate, and I have concluded that the reference to the lobbies and the personalities and the bureaucratic control is something that we are not going to settle by passing this bill or adopting the O'Hara amendment. The focal point that should be considered that could remedy this entire situation is the substantial-evidence rule. The doctors do not have a great lobby that is against the American public. They are respectable people. So are the druggists, and certainly so are all of the Americans. But the one thing that they fear in this legislation is the fact that Oscar Ewing or John Doe or any other Administrator will have the power to set a rule or regulation, and that the man who is affected and hurt by that cannot go into court and have his day in court.

This Congress should go to work on correcting the ill that has been caused by the substantial-evidence rule, which has, in effect, taken away from the people of the United States their day in court and turned it over to administrative officials. When you rectify that situation, you are going to solve the problem that besets you because of bureaucratic control, and only then will it be solved.

The CHAIRMAN. The Chair recognizes the gentleman from Texas [Mr. BECKWORTH].

(Mr. CARLYLE asked and was given permission to yield the time allotted to him to Mr. BECKWORTH.)

Mr. BECKWORTH. Mr. Chairman, I was very much impressed by the statement of the gentleman from Nebraska [Mr. MILLER]. He emphasized that some 700 new drugs are coming on the market. Certainly this will add to the confusion that already exists. It is that confusion that this bill is designed to alleviate in part. When the inference is given that just two parts of this bill are important, and that this third part is not so important, that is just a misleading inference. This third part, the one that has been so controversial, is a very important part of this bill.

A lot has been said about a man's having his day in court. One of the things we are considering in this bill is that very question of the day in court, a day in court with reference to the sale of a given drug. The way the situation is today, you have your day in court after you have sold the drug, if you are a druggist, and if you are guilty you are already guilty. What we are trying to do in preventing the adoption of the O'Hara amendment is to see that a man has his day in court, as it were, before he is already guilty of something. If we adopt the O'Hara amendment, we shall continue to have the exact situation we have today, and added to this list that I have referred to on page 98 will be a lot of other druggists in this country who will be brought into proceedings after they have already performed the acts which subject them to the charge.

I cannot believe the members of this committee want to continue to cause a great segment of the businessmen of this country to have to undergo the uncertainty which has characterized their efforts.

The gentleman from Indiana [Mr. HALLECK] said that the Pure Food and Drug people say that the consumer is protected. Even though that be true, and I almost doubt it under the uncertainty that exists, still the druggist is one of the people we are proposing to try to protect, and he has stated in the most vocal manner he can through his national organization of some 34,000 that he does need that protection.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. CRAWFORD].

Mr. CRAWFORD. Mr. Chairman, it gives me pleasure to support the O'Hara amendment. Apparently I have some pretty good druggists in my district. I have never found any of them hanging on jail doors so far, and I do not know of any of them having been locked up—and I have been around some of the jails myself. I think the druggists are getting along pretty well. They do write me a great many times and say, "Please do not give any additional powers to the executive agencies of the Government." Therefore I am very delighted to have my friend, the gentleman from Minnesota, offer this amendment, and I hope it will be approved. Then I will have no objection to this bill as it has been presented, that is, if it can be amended in this way.

The CHAIRMAN. The Chair recognizes the gentleman from Ohio [Mr. CROSSER].

Mr. CROSSER. Mr. Chairman, and members of the Committee, I could not help but feel that if certain common words like "bureaucrat" and "socialist," and so on, were eliminated from the English language a lot of speeches could not have been made here today. The fact of the matter is that a lot of balderdash has been uttered in an effort to sabotage this bill. The thing that really counts is what the O'Hara amendment would take out of the bill. What protection has a man at this time? Yes, he can go ahead and defy the law and be tried and sent to jail. They say that the jails are not filled with people like that. But many of them have been sent to jail in just that way. This is the only way we can give a man a fair hearing before the man is in trouble and before an injunction has perhaps ruined his business and even his reputation. All this does is to undertake to put in the hands of this man the authority to do the job. I never knew much about this man but I saw no horns on him when he appeared before our committee. Perhaps we can get some sweet-looking fellow that would suit these people better. But I have seen nothing and heard nothing to indicate in the slightest degree any desire on his part to arrogate to himself any unlimited power. The fact of the matter is I thought the Administrator was unusually modest in not wanting to have a great deal of power put into his hands.

I hope that this abominable amendment may be voted down and the people of this country protected.

The CHAIRMAN. The time of the gentleman from Ohio [Mr. CROSSER] has expired.

All time has expired.

The question is on the amendment offered by the gentleman from Minnesota [Mr. O'HARA].

The question was taken; and on a division (demanded by Mr. HARRIS) there were—ayes 141, noes 85.

So the amendment was agreed to.

The CHAIRMAN. The question is on the committee amendment as amended.

The committee amendment as amended was agreed to.

The CHAIRMAN. Under the rule, the Committee will rise.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. COLMER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H. R. 3298) pursuant to House Resolution 354, he reported the same back to the House with an amendment adopted in Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Carrell, one of its clerks, announced that the Senate had passed without amendment a joint resolution of the House of the following title:

H. J. Res. 303. Joint resolution to provide housing relief in the Missouri-Kansas-Oklahoma flood disaster emergency.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 4329) entitled "An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of such District for the fiscal year ending June 30, 1952, and for other purposes."

RESIGNATIONS FROM COMMITTEES

The SPEAKER laid before the House the following resignation which was read by the Clerk:

HOUSE OF REPRESENTATIVES,
Washington D. C., July 27, 1951.

Hon. SAM RAYBURN, *Speaker,*
House of Representatives,
Washington, D. C.

DEAR MR. SPEAKER: I herewith submit my resignation to the House Committee on Interstate and Foreign Commerce effective July 30.

Respectfully,

WILSON D. GILLETTE.

The SPEAKER. Without objection the resignation is accepted.

There was no objection.

The SPEAKER laid before the House the following resignation which was read by the Clerk:

HOUSE OF REPRESENTATIVES,
Washington, D. C., August 1, 1951.

Hon. SAM RAYBURN,
Speaker of the House,
United States Capitol,
Washington, D. C.

DEAR SIR: I hereby tender my resignation as a member of the Committee on Veterans' Affairs effective this date.

Yours very truly,

HARMAR D. DENNY, Jr.

The SPEAKER. Without objection the resignation is accepted.

There was no objection.

ELECTION TO COMMITTEE

Mr. MARTIN of Massachusetts. Mr. Speaker, I offer a privileged resolution (H. Res. 365).

The Clerk read as follows:

Resolved, that HARMAR D. DENNY, JR., of Pennsylvania be, and he is hereby, elected to the Committee on Interstate and Foreign Commerce of the House of Representatives.

The resolution was agreed to.

TREASURY-POST OFFICE APPROPRIATION BILL, 1952

Mr. GARY. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H. R. 3282) making appropriations for the Treasury and Post Office Departments and funds available for the Export-Import Bank of Washington for the fiscal year ending June 30, 1952, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Virginia? [After a pause.] The Chair hears none and appoints the following conferees: Messrs. GARY, FERNANDEZ, PASSMAN, SIEMINSKI, CANNON, CANFIELD, WILSON of Indiana, JAMES, and WIGGLESWORTH.

THE CENTRAL VALLEY IRRIGATION PROJECT, CALIFORNIA

Mr. HAVENNER. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to include an article from the Christian Science Monitor.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HAVENNER. Mr. Speaker, today the people of California begin a 10-day celebration of the official opening of the irrigation department of the great Central Valley project. For the first time in the history of the world irrigation water will be moved, under the direction of man, for a distance of 500 miles. After the first water is released from Shasta Dam, at the northern end of the Sacramento Valley, it will take 10 days for it to reach the southern end of the Friant-Kern canal in the lower San Joaquin Valley.

Two-thirds of the Central Valley project's water supply originates in the Sacramento Valley, but only one-third of the agricultural lands which can be irrigated are in this section. So the largest celebration will occur when Secretary of the Interior Chapman dedicates the huge pumping plant at Tracy, where the northern waters will be pumped over "the hump" into the vast agricultural areas of the San Joaquin Valley, stretching southerly for nearly 300 miles.

Mr. Speaker, water is the lifeblood of California's economy, and the unfication of the water resources of these two great valleys, whose soil is as rich and fertile as that of the Valley of the Nile, is an epic achievement. All of the people of America will in the future partake of the food crops which the wizardry of this water supply will produce in this great agricultural domain.

We Californians are grateful to the Congress of the United States for financing this great project, and we are confident that all of our previous promises to repay much of the money expended will be fulfilled.

Following is a fine description and discussion of the Central Valley project, which was published a few days ago in the Christian Science Monitor:

(By Saville R. Davis)

IN AN AIRPLANE OVER REDDING, CALIF.—From 11,000 feet, on a level with the top of Mount Shasta, you sweep north over the thirsty Central Valley of California and say to yourself: This is one answer to the world's problems.

Below you is point 4 in operation.

You have flown along 500 miles of valley where water makes the difference between parched desert and an incredible richness of yield. Not water as nature unleashed it, catastrophic flood followed by unbearable drought, but water stored in floodtime by the ingenuity and cooperative effort of men, and distributed evenly throughout the year.

You have flown over a crazy quilt of fields in the south part of the valley, where some of the highest yields an acre in the world are in imminent danger. The water table is falling rapidly and must be rescued.

THIN CURVE OF WHITE

You followed the long threads of rivers, dams, canals, and pumps which in effect will deliver surplus water from the northern top of the valley all the way to the south, beginning August 1. On that date, huge pumps at Tracy will lift northern water into the Delta-Mendota Canal and cut in the connecting link of this vast system.

You watched first the cotton and citrus fields and the vineyards melt into a hot haze behind you; then the abstract art of the rice paddies farther north. Now you go up into the nose of the plane and look past the pilots to see what makes it all possible.

The Sacramento River narrows. A mountain wall looms up at the top of the valley. A patch of whiteness against a gray-hot sky becomes the cone of Shasta in the distance. You can almost feel the tension exerted on that snow and mountain water by the craving of the valley behind, a pull of the lives of men and women and their desire to feed the hungry and make nature work for the people instead of against them.

Then you see it, a thin curve of white, no bigger than a man's hand. As the plane climbs higher and the foothills drop below the line of your eye, it suddenly stands out, glistening. And behind it is water, blue, blue, and seemingly endless. The higher you climb, the more water you see, reaching like the spokes of a fan back into deep mountain valleys.

WATER UNDER AUTHORITY

Your greedy eye tells you there is no treasure like this, as the sheets of blue finally come into full view, and look like an empire of wealth below. This is water under authority, ready to go down through electric generators, down the Sacramento River, across the maze of the deltas, up through the pumps of Tracy, along the Delta-Mendota canal for 120 miles, down into the San Joaquin River—thereby releasing the headwaters of the San Joaquin to flow on southward in the 150-mile Friant-Kern Canal, into the very pit of fertility and falling water tables in the bottom of the valley.

A man can be forgiven a sense of rhapsody at a moment like this.

Back in the slipstream of the plane and ahead in those fjords of water are examples—so easy to see and grasp within the classic limits of one valley—of what both the individual and cooperative genius of men can accomplish. Down below there is a whole complex of rich farms built by the initiative and drive of men who love the land, local irrigation districts which slowly brought order into a fantastic tangle of water rights, and huge dams where the distant power of national government brought its giant financial strength into the valley and its controversial ideas on conservation and the family-sized farm.

CONTRADICTORY ELEMENTS

Looking at it from up here where the haze thins out, you can't see clearly enough to resolve all those conflicts down below. But you can at least make out a pattern which includes all the fiercely contradictory elements. You have the owner of the large farm, who looks very big to the small migrant worker, and in turn feels very small when he looks up at the power of the Federal Government.

You have the drive of individual initiative raised to a high intensity by the extremely profitable return for efficient operation in the valley—and you have the socially conscious drive to protect the migrant worker and the family farm.

You have the advantages of big business, never more brilliantly illustrated than on the enormous industrial farms here which are operated as business enterprises, and you have the disadvantages of bigness. Likewise you have the very human longing for security on a smaller subsistence farm, where it is economically feasible, and you have the limitations of the small unit in this world where the consumer wants the low costs of bigness.

You also have a lusty political battle.

This country now has what is called a "mixed economy." Those who believe in slanting it as heavily as possible in favor of private initiative are battling in this valley against partisans of the Bureau of Reclamation which would slant the mixed economy in favor of public power and control of water to favor the small landowner.

Snce the American democracy is built that way, each side is using every political weapon to advance its cause.

THIRD INGREDIENT

From up aloft, here, it is easier to see a third ingredient which exists independent of the controversy. It is the fact of more water for the valley. Whatever the final balance between the individual and the collective, it's plain that something very big is happening here. It is easy to fancy, at this height, that you can see out beyond the valley walls and across a world where the development of resources has only begun.

Many a prophet, standing at the half-century mark last winter, looked ahead 50 years and said that the development of world resources, to feed the hungry and lift the degrading plague of poverty, would dominate the new half century. Granted that big projects—dams and irrigation, for example—are only part of this picture. What underdeveloped areas most need at the start is not tractors but to add a few pounds of steel to the wooden stick which most of the world's farmers use for a plow. At first, unspectacular teaching of simple good farming with modestly improved tools offers by far the greatest gain.

But the Central Valley projects have their place too. They lift sights and plans. They show what the group can do, which men living each unto himself cannot accomplish. Without vision, as the prophet said, the people perish—in this case from flood, erosion, natural drought, and drought from misuse of the land. There is vision, here, for people elsewhere who are crushed under the weight of inertia and who just don't know that it can be done. Once they learn—who shall say what limits there will be to similar valley projects?

DOWN TO EARTH

To come down to earth.

There is one point on which the whole valley is united: the new supply of water is itself a kind of miracle. Everyone welcomes it. But from that point on begins one of the really epic contests of these times. Two

coalitions of people, two philosophies of government, are locked in dispute over which shall control the distribution of the precious liquid. Each has a special interest and each believes it represents the American way.

The conflict is complete. In the lustiest tradition of American politics, each side is using argument, propaganda, State and national political pressure. No more genuine dispute could divide two groups of people.

The only fair procedure is to state the case for each, with all the eloquence of its sponsors. Then let the democratic process work, the reader make up his mind, and the best man win.

On one side stand the supporters of the United States Bureau of Reclamation, conceived by one Roosevelt and lifted to its present pinnacle by another. The following is the best partisan—repeat partisan—argument for the Bureau that a week in the Central Valley could yield, from all available sources:

IMAGINATIVE TERMS

The Bureau of Reclamation stands for a very large concept called conservation—conservation of national resources and their development for the best use of the largest number of people. It thinks in bold and imaginative terms. It enters the Central Valley as a combination engineer and politician would set about a job of master planning for the community as a whole.

It asks: What are the total water resources of this valley available to competent engineers? How can they be harnessed so as to serve the best balance between all the elements of land and resource development for this valley: flood control, irrigation, production and distribution of electric power, preservation of water tables, forestation, recreation, scenic development, fish and wildlife conservation. And how can these factors be fitted into a broadly liberal concept of social and political planning for the valley? How can the benefits of public investment of public money be made to serve the largest number of people?

For the Bureau is frankly a social and community planner. At its very inception, under Theodore Roosevelt's law of 1902, it was brought into being to form homesteads—subsistence farms for small men. It had then, and retains now, a definite social philosophy: that large concentrations of landed wealth can readily be built up under the competitive system, and become powerful enough to drive the small man out of business unless society steps in and defends the small man.

DRASTIC POSITION

The Bureau and the reclamation law behind it developed not long after the first antitrust laws in the industrial field. From their very beginning in 1902 they have taken a drastic position against land bigness, through the extremely controversial 160-acre limitation, as it is called—the provision that water and all the benefits flowing from Federal reclamation projects shall not go to farms larger than 160 acres, except in States where man and wife can hold property in common. There the limit is 320 acres.

The Bureau and its friends believe this is in the American tradition. Americans, they argue, came to this country precisely to escape from the medieval form of society where the few big men were lords and the many small men were serfs, where land reform came only by bloody revolution and didn't come to stay.

The American democracy was built by and for the average man, and history books show many safeguards written into law by the early settlers and the founding fathers, so that no men could take advantage of the tendency of wealth and power on the land to beget more wealth and power, and thereby to set up a land monopoly and a kind of dictatorship over the lives of its workers.

Today, in the Central Valley, the Bureau and its supporters live by the same philosophy. Which is better, they argue: A valley where water brought in by public money is used to encourage as many men and women as possible to own their own homes and farms? Or the valley where huge corporation farms with their inevitable encouragement of drifting, homeless, migrant labor, are allowed to dominate the picture and grow unchecked?

UNITED STATES LAW CALLED IN

"Is the latter a fit pattern for American society?" they ask. If not—here a tough-minded political point comes in—then who is to prevent it? The laws of the States. Sometimes, yes. The admirably democratic irrigation districts here are a formation of California law.

But in general, granting the merit of States' rights, history shows that the National Government has been more responsive to conservation needs and to the small man than State legislatures, and the latter have been more vulnerable to the lobbies and special interests of large landowners, private utilities, and industrial units. So the argument goes.

Hence the Federal law steps in—or rather is called in, because up to now the States haven't felt they could muster the financial strength for the huge dams, canals, and power plants for the regional developments of today.

When opponents of the Bureau argue that it is big and remote and socialistic and dictatorial, and represents an even worse example of bigness than the large farms it wants to counterbalance, in the valley, then the Bureau's friends reply that it is big, yes. The Federal Government is big. But what is the effect of its intervention in the valley? To protect the small man, which is a legitimate function of Government. The unavoidably large power of Government is being used not for purposes of bigness but to encourage a citizen-sized smallness.

CHARGE REJECTED

In general, the Bureau's friends consider that it supports private enterprise rather than the contrary. It carries Government operation only to the point of delivering water to the private farm, business, or consumer.

From that point onward, its concern is to serve as many private enterprises as possible. (With respect to electric power, the debate is admittedly a little different and too complex to summarize adequately here.)

Finally, the friends of the Bureau reject the charge that it denies to Americans the right of equal opportunity. Opportunity, they ask, for whom? For the comparatively few or the many? Exclusive opportunity for those who are already established owners of land and water rights and who naturally look askance at newcomers—or for the workers and migrant laborers who don't have land now, and would like to get enough land and water for a home and family? What, they ask, is "equal" opportunity—especially in a valley where both land and water are in short supply—except opportunity for the largest number of citizens?

THE OTHER SIDE

On the other side of this large-scale debate stand the organized farmers and business organizations of the valley. They are supported to the extent that its policy is not to interfere with local administration of the water resources. The following is the best partisan—repeat partisan—argument for their side that a work in the valley could yield, from all available sources:

To begin with, they tell you, the reclamation law is archaic. It was created to open up new homesteading land a half century ago. If its 160-acre limitation made sense then, it makes none today.

For one reason, the Central Valley is not a wasteland area to be reclaimed. When the Bureau of Reclamation came in here, much of the valley was a highly developed area with an intricate system of water rights tested in the courts.

To be sure, a large amount of new land will be brought into use by Bureau water, and the rapidly falling water table will have to be reclaimed. But to talk of reclamation for the area as a whole makes nonsense. The Bureau, entering the valley with an alien philosophy, is not touching virgin soil as in much of the Tennessee Valley; it is touching men's long-established investments and rights in which they should be secure.

This cannot be done under the morale of our system. The Government has no ethical right to tear up a system built by men who were free to build their own way of life in order to impose some other philosophy and system.

OPPOSITION VOICED

For this reason small farmers as well as big are generally opposed to the Bureau and its policy. Actually, small farms dominate those parts of the valley where fruit and nuts are grown. Subsistence farms are entirely practical for these crops. In the Kings River service area, for example, the average size farm is 30 acres.

These farmers are individualists. They believe in opportunity and don't want to be told they can't expand. They are mostly organized in irrigation districts under the admirable California law, which include some 450,000 acres throughout the State and are run by democratically elected boards of directors.

With few exceptions these small farmers stand firmly with the large farms in opposing extended Federal intervention in their affairs. They say it is a misleading propaganda device for their opponents to argue that the issue is big farms versus the Government.

They say the issue is both small and big farmers, who want local ownership and control, against regimentation and dictation from Washington. As a visiting party of writers was told in Fresno by Gilbert H. Jertberg, "Those who administer and control the water resources control the life of the valley."

But big farms, most of them outside the irrigation districts, are an issue, too. They show the real absurdity of the reclamation law. They represent something the law never conceived: modern bigness, which is far more efficient and can produce lower-cost crops than any other known variety of land use.

These are the equivalent, on the land, of the great industries which are the glory of American productive power which pay the highest wages and produce the lowest-cost automobiles and deep freezers and TV sets anywhere in the world.

MECHANIZED BUSINESS

These farms produce cotton and vegetables on the same incredible scale. They are not farms in the ordinary sense; they are businesses. They are mechanized to their fingertips. Their managerial and accounting systerms are like those of industry. They require a massive investment.

Their financial strength is necessary to pay the huge costs of drilling deep wells in areas away from river banks and canals and irrigation districts. They are large enough to stagger their planting and harvesting seasons of several crops, to make the work season as long as possible for their labor and to keep as many year-round workers as they can.

For community reasons, you may not prefer bigness and you may sympathize with

the idea of family-sized farms. But you as an American consumer have proved that you are not going to turn your back on the big, efficient chain store, and go back to the corner grocery. You are not going to ask Congress to break down General Motors Corp., as long as there are Ford and Chrysler and the others to compete healthily with it. And in the same way, bigness in those areas of the valley which mass-produce low-cost row crops is here to stay. You the consumer want its cheap, mass-produced crops.

To break down bigness of this sort—which is certainly not monopoly because there is plenty of competition between big units—is flying in the face of progress. Anyhow, it won't work.

HEART OF ARGUMENT

Next, come to the heart of the free-enterprise argument.

The United States today has taken its stand as the citadel of free enterprise. We believe in that system. The alternative is central government so powerful that it becomes a dictatorship. The man or Government agency who lays a hand on that freedom of enterprise, who assumes the right to shut off your water or deny you new water if you don't follow his rules, is destroying that system.

Granted there are laws which men must obey. But those are laws to preserve freedom, not supplant it. And any Federal agency which flies in the face of modern bigness, which puts a fence around a man's opportunity and says, "No further; you may not expand your business," is already well over the danger line.

The Bureau is socialistic. It believes in public power as a doctrine, and public control of water distribution is another logical outcome of that sort of thinking. It puts the plan before the individual, and we put the individual before State planning. When you are a farmer, struggling with the many problems of irrigation and you think your rights are in danger from a Government bureau, then you learn what a man's objection to the heavy hand of Federal Government can be.

Your opponent is a huge, remote abstraction, backed by enormous appropriations of the citizens' tax money, made up of officials who may be friendly, personally, but whose whole concept of government is hostile to yours. What can you do? Protest to a local office? Telephone Washington nearly 3,000 miles away and talk to people who have little sympathy for your point of view? Try it sometime.

LEVELING UP

Finally, about opportunity. The American principle is that of leveling up, not leveling down. Socialism distributes a shortage and sets a tone for the whole economic system of passivity and indolence—while free enterprise breaks through the shortage by finding more ways to produce, and thereby enlarges prosperity for everyone. Free enterprise is the principle of letting the man with initiative and know-how, who has the talent for building a giant enterprise, go ahead and do it. If you force him to stay small, you stifle just those leaders and that incentive which together will push out the frontiers for the many, and lift the level of prosperity for the whole.

These, briefly, are the two sides of the case.

At this point, having been caught in the crossfire of the argument, the reporter is a little dizzy. Doubtless so is the reader, too. For this is only the beginning. There are scores of detailed issues, each with its pros and cons running off the main streams like babbling brooks. Anyone who is familiar with the valley will know how painfully inadequate these summaries are. The debate over public power, which was only touched here because it is better known across the country than the land and water problems, could fill volumes by itself.

Enough has been said, however, to show that any honest man must concede there are many cogent arguments on each side, and that men of good will can reasonably differ on how they add it all up.

A very few conclusions can be attempted in the hope that they will be met with tolerance.

Since this is a democratic country, a compromise is in the making. Clear-cut decision one way or the other seems unlikely. Neither side would be happy about compromise, but it may work out so that a minimum of damage would be done to the legitimate interests of each.

REALISTIC FACTOR

A realistic factor which makes for compromise is the ironic fact that big farms will in the end benefit by Bureau of Reclamation water, even if the 160-acre limitation continues. Wherever the Bureau water enters the ground, it will ultimately sink into that underground pool from which many big farms pump their supply. Despite the law, therefore, it is not within the power of the Bureau to see bigness eliminated.

A political factor making for compromise is that both sides have stated their cases and plied their politics determinedly and well. Already national sentiment has shifted more than once, and each side has had days of favor in Washington. Much will depend on the course of future national elections. In general the Democratic Party has been the sponsor and most eager friend of the Bureau in recent years. If it stays in power, the 160-acre limitation would probably not be modified. If the Republicans win, they will tend to put more restriction on the Bureau and less on the large landowner in the valley.

FACT BEYOND CONTROVERSY

Finally, and at this point the glint of a crusade can safely come back into the reader's eye, there is the fact beyond controversy.

This is an epic achievement, this unification of the resources of a great valley. It has meaning for a sick world. In spite of dispute, the job was done and the water is here, and somehow it will get distributed and the water table will begin to be rescued and the rich fields will continue to flourish, and then more parts of the project—dams and power plants and canals—will be opened up. Already the State of California is embarking on the huge Feather River project which is next in line.

If wars begin in the hunger and poverty of the world, as well as in men's minds, then by projects like this the peace can partly be won. The resources are available in the world. One key to the next half century will be the development of them.

ONE HUNDRED AND SIXTY-FIRST BIRTHDAY OF UNITED STATES COAST GUARD

Mr. SEELY-BROWN. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. SEELY-BROWN. Mr. Speaker, the United States Coast Guard will observe its one hundred and sixty-first birthday on August 4, 1951, and as it is possible that the House will not be in session upon that day, I would like to put into the RECORD some appropriate comments upon this important anniversary.

The service of the United States Government which we now recognize as the Coast Guard was founded by Alexander Hamilton in 1790 when he was the first Secretary of the Treasury of this country.

Although the Coast Guard is perhaps the least publicized of all of the military or the semimilitary services of the Government, it functions efficiently although anonymously day and night, not only along all of the coasts of our country and in the off-shore waters under the jurisdiction of the United States of America, but also upon many of our inland waterways, particularly the Great Lakes.

In addition to its regularly prescribed duties, the Coast Guard performs services of great value, such as the iceberg patrol, for example.

The motto of the Coast Guard, semper paratus, means always prepared, and the officers and men of this great service are living up to the responsibilities of that motto every hour of every day. The saving of lives by land, by sea, and by air is a routine performance of the Coast Guard, and the number of valiant rescues at sea is so great as to be difficult even to enumerate.

In World War II, as an officer of the Navy, I had the opportunity to observe at close range the operations of the Coast Guard, the members of which were performing a duty which strengthened immeasurably the effectiveness of the American fighting team, not only in the Pacific, but in all the oceans.

The Coast Guard is charged with important enforcement duties. It also maintains and operates the lighthouses along our coasts and protects the lives and safety of the public by its inspection of all kinds of civilian craft.

In my district of Connecticut, the Coast Guard has a particularly warm place in our affections, not only because of the base at New London from which many of its operations in Atlantic waters proceed, but particularly because of the United States Coast Guard Academy at New London. This institution, the junior of the service academies, trains the officers of the Coast Guard and, notwithstanding the criticism which has been heard here from certain quarters, its standards are high and are so recognized by all of the colleges and technical schools of this country. No young man graduates from the United States Coast Guard Academy unless he is fully equipped physically, mentally, and morally to fulfill the responsibilities of a commission in the Coast Guard and the responsibilities of leadership among citizens of our country.

The people of the United States of America living today and the generations still to come owe a debt of gratitude in many particulars to Alexander Hamilton, and not the least of these is for his founding of the service which we know today as the Coast Guard.

As citizens all of us would do well to adopt as our own motto the words so well characterized by the daily lives and actions of our men in the Coast Guard: Semper paratus.

OUR DOLLAR DIPLOMACY NO PANACEA FOR WORLD ILLS

Mr. MASON. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. MASON. Mr. Speaker, the annual Reports of the Secretary of the Treasury for the last 10 years—1941–51—show that the State Department has spent $2,458,657,115. This amount covers its own operating costs plus the foreign aid it has been directly responsible for. The yearly amounts spent varied from $25,121,083 in 1941 to $305,375,133 in 1951. The State Department has been given public funds and wide authority never contemplated by the framers of the Constitution.

During these 10 years our Nation has had to face one emergency after another, notwithstanding the fact that we have poured out in foreign aid some $117,000,000,000 in grants, loans, credits, and so forth. Yet we now have a greater number of potential foreign enemies than we had in 1939—an indication that dollar diplomacy as practiced by the State Department for the past 10 years is no panacea for the world's ills, whether they be economic ills or social ills.

The State Department under Acheson—with his flock of internationalists, one-worlders, uplifters, and do-gooders—has had for its objective the following:

First. To raise the standards of living of the rest of the world to those of the United States. This we know cannot be done without lowering our standard of living.

Second. To take the United States into foreign alliances of all kinds in spite of George Washington's warning against foreign entanglements.

Third. To sacrifice and surrender the sovereign, inherent, and unalienable powers of this Republic to the domination and control of foreign nations and foreign-controlled international bodies functioning under the so-called United Nations.

Fourth. To establish a welfare state on a world-wide basis.

Mr. Speaker, on February 12, 1942, an Advisory Committee on Postwar Foreign Policy was set up in the State Department. That Committee issued State Department Bulletin 3580, a 726-page cloth-bound book, released in February 1950, entitled "Postwar Foreign Policy Preparation." Page 79 contains the following significant statement:

> The Committee agreed that its work should be approached from the general standpoint of the kind of world that the United States desired after the war. It also took the position that the President, in view of his executive responsibilities, would need to have recommendations for action as well as information on all problems on which a national position would have to be taken or an attitude expressed.

The membership of the committee included Henry A. Wallace, Paul H. Appleby, Alger Hiss, Philip C. Jessup, Nelson A. Rockefeller, Harry D. White, David Niles, LeLand Olds, Harry Hopkins, Julian H. Wadleigh, Harold L. Ickes, Dean G. Acheson, and many others. With such a committee is it any wonder that our foreign policy has been all wrong? Could you expect a foreign policy tailored by such a group—the majority of whom have since been discredited—to produce any better results than we have had during the past 10 years?

HON. ED GOSSETT

Mr. PHILBIN. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. PHILBIN. Mr. Speaker, I am very anxious to join with my esteemed colleagues in the House in paying tribute to my valued friend, Congressman Ed Gossett. We all deeply regret his departure from this great legislative body. During his 14 years of faithful service to his constituents and the Nation in the Congress he has made an outstanding and brilliant record, and he has made very many warm friends among us and in the National Capital.

I can well understand the reasons which prompted him to leave Congress and resume his professional life. The demands upon Members of Congress have never been greater than they are today. The scope and magnitude of our duties are constantly increasing. The gravity of the problems confronting us is continuously enlarging. The augmented work incumbent upon us puts increasing burden upon our energies and powers of endurance. Moreover, many in this body are required at the present time to serve at great personal and financial sacrifice. There are occasions when, in the light of developing family responsibilities, our Members cannot continue longer to be unresponsive to their obligations to their families and their dear ones. This fact makes Ed Gossett's decision to leave the public service all the more understandable.

To strike a personal chord, let me say that I personally entertain greatest esteem, respect, and admiration for my distinguished colleague from the great Southwest—from the great State of Texas—whose citizens he has so conspicuously represented in this body. I am very confident that these feelings are shared and felt by every Member of the House whose privilege it has been to know Ed Gossett. His people are losing an able and distinguished Representative, the House is losing a most valuable Member. We are all losing the presence of a good friend, but we hope he will return to see us often.

He is possessed of such strong, rugged character and such outstanding ability that he would be a marked success in any field he chose to enter. I am sure that in his new association he will make the same fine impression and splendid record which have distinguished his service here.

I hope that he will enjoy his work, that he will be able, notwithstanding his departure from public life, to make many contributions to the welfare of the Nation, and that he and his family will be blessed with good health, success, prosperity, and happiness in the years to come.

CONSERVATORS OF ASSETS OF CERTAIN PERSONS OF ADVANCED AGE

Mr. McMILLAN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 11) to provide for the appointment of conservators to conserve the assets of persons of advanced age, mental weakness not amounting to unsoundness of mind, or physical incapacity, insist on the House amendment and agree to the conference asked by the Senate.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from South Carolina? [After a pause.] The Chair hears none and appoints the following conferees: Messrs. HARRIS, ABERNETHY, and O'HARA.

The SPEAKER. Under the previous order of the House, the gentleman from Oregon [Mr. ANGELL] is recognized for 30 minutes.

AMERICA'S AGED CITIZENS IN DIRE NEED BYPASSED WHILE BILLIONS OF AMERICAN TAX DOLLARS ARE BEING BROADCAST AROUND THE WORLD

Mr. ANGELL. Mr. Speaker, thousands of elderly American citizens are in dire need of the necessities of life. With the virus of inflation gnawing at our vitals, the 50-cent dollar and the meager income of the elderly citizens of America, many of them are wasting away and dying of malnutrition.

Regardless of the appeals of many of us who down through the years have been urging the passage of legislation providing for the essential needs of this forgotten group of our citizens, nothing substantial is done for their relief.

On February 16, 1951, I introduced House bill 2678 which provides for a Federal old-age security program which would give adequate consideration to every worthy citizen who, by reason of age or disability, is in need. Unfortunately this bill is pigeonholed in committee. I filed discharge petition No. 4 which is on the desk of the Speaker and there are now 120 signatures on this petition of the 218 needed. I most sincerely urge every Member in the House who is interested in the welfare of these elderly citizens of our country to sign this petition at once and thereby bring this bill on the floor for consideration.

While we are permitting these old folks of America to starve in a land of plenty, we are spending untold billions around the world for any and every project that can be promoted by an active imagination. Do you realize how much we have spent of the American taxpayers' dollars overseas in the last 10 years? Foreign spending has reached to gigantic proportions and has added materially to the inflation which is robbing the low-income groups of America of the ability to buy even the necessities of life. President Truman has asked for a new appropriation now of $8,500,000,000 to be

used for military and economic aid to foreign countries. Secretary Acheson has recommended $25,000,000,000 for foreign spending in the next 3 years. The President plans an over-all expenditure for the fiscal year of over $71,000,000,000. If this appropriation is granted it would mean the total authorized gifts, loans, and credits in the last 10 years for foreign aid would aggregate $124,000,000,000.

Between January of 1940 and January of 1951, Congress voted nearly 103 billions for foreign aid, more than twelve billions in loans, and approximately one and one-half billions in international credits. The total, exclusive of President Truman's latest request, is almost one hundred fifteen and one-half billions, not all of which has been expended to date. It should be noted that figures quoted do not include the billions now being spent by our country for the defense of other countries nor the multi-billion-dollar cost of winning World War II. Granting the President's latest request for eight and one-half billions would bring the 10-year total of sums loaned or given away to the rest of the world to nearly $124,000,000,000 in addition to our war and defense costs. This staggering sum represents about half of our national debt which now amounts to approximately two hundred and fifty-six billions. Our 10-year outlay to foreign countries, if President Truman's request for eight and one-half additional billions is granted, will equal about one-fifth of the entire physical assets of the United States.

It is true in the last Congress we amended the existing social-security law so as to provide some additional payments to certain groups of insured workers, and broadened its coverage to take in many occupations not heretofore covered. However, we gave no relief to the hundreds of thousands of elderly American citizens who are not qualified to take as insured workers.

The existing social-security program is unsound in its fundamental provisions. Under it we have collected billions of dollars from the workers and their employers and the money has been immediately spent by spendthrift bureaucrats for almost everything under the sun except taking care of the elderly people. As a result when the time comes that these trust funds are needed, additional taxes will have to be levied to take care of the annuities owed to the workers. The President's fact-finding board recently reported that the Government has failed to provide social insurance for industrial workers generally and has supplied old-age retirement benefits in amounts which are not adequate to provide an American minimum standard of living.

It is of interest in consideration of the problem of old-age security to review the effect of the 1950 amendments under the Social Security Act and the entire problem of Social Security as it now confronts us. Under the Social Security Act as amended, protection against the economic hazards of old-age is afforded by the programs of old-age assistance and old-age and survivors insurance. The Federal Government participates in the former program through grants-in-aid to the States for needy individuals. No major change was made by the 1950 amendments with respect to this program. The Federal matching formula adopted by the Congress in 1948 is currently in effect. Under this formula the Federal share is three-fourths of the first $12 of a State's average monthly old-age assistance payment per recipient plus one-half of the remainder within individual maximums of $50. In other words, the Federal Government provides a maximum of $30 of the payment to a recipient, if a State provides $20 or more.

The old-age and survivors insurance program was greatly revised by the 1950 amendments. Coverage was extended to nearly 10,000,000 jobs, eligibility requirements were liberalized, and benefit amounts were increased. I will discuss these major revisions briefly.

EXTENSION OF OASI COVERAGE

Prior to the enactment of the 1950 amendments, about 35,000,000 jobs were covered by old-age and survivors insurance. The amendments extended the system to nearly 45,000,000 jobs. The principal group brought under coverage January 1, 1951, was the self-employed—other than farmers, ministers, physicians, lawyers, dentists, osteopaths, veterinarians, chiropractors, optometrists, Christian Science practitioners, architects, naturopaths, funeral directors, professional engineers, and certified, registered, licensed, or full-time practicing public accountants.

Other groups afforded the protection of the system, beginning January 1, 1951, are regularly employed domestic workers, regularly employed agricultural workers, employees of nonprofit organizations, State and local government employees other than those covered by a retirement system, certain Federal employees not covered by another retirement system established by Federal law, certain life insurance and wholesale salesmen, certain agent drivers and commission drivers, and certain industrial workers. Employment and self-employment in Puerto Rico and the Virgin Islands are covered by the 1950 amendments. Also, employment performed outside the 48 States, the District of Columbia, Hawaii, Alaska, Puerto Rico, and the Virgin Islands by American citizens for American employers is now covered employment as well as employment on certain American aircraft regardless of the citizenship of the employee rendering the service.

ELIGIBILITY REQUIREMENTS

The 1950 amendments made extensive revisions in the requirements for eligibility for old-age and survivors insurance benefit payments. An old-age insurance benefit is now payable at age 65 if the worker is fully insured and does not earn in excess of $50 per month in covered employment. At age 75 such individual may earn any amount in covered employment and still receive benefit payments. Formerly, earnings of $15 or more a month in covered employment disqualified an individual from receiving benefits for that month.

By providing a new start in eligibility requirements, the 1950 amendments have made it much easier for an older individual to qualify for benefits. This new start modifies the definition of the required fully insured status for old-age insurance benefits. Prior to the 1950 amendments, an individual to be fully insured, so as to be eligible for old-age benefits, had to have either (a) calendar quarters of coverage at least equal to one-half the number of calendar quarters elapsing since 1936 and before attainment of age 65, or (b) 40 calendar quarters of coverage. Under the 1950 amendments, to have a fully insured status an individual is required to have quarters of coverage for only one-half the number of calendar quarters elapsing since 1950—with a minimum of 6 quarters of coverage required—but such calendar quarters of coverage may include those earned prior to 1951 and also those earned after attainment of age 65. A quarter of coverage is acquired if an individual has at least $50 in taxable wages in the January-March, April-June, July-September, or October-December period; for the self-employed, income of $400 in a year is required for four quarters of coverage.

The sharp reduction in the number of quarters of coverage required for fully insured status for older workers under the 1950 amendments as compared with the former law is indicated in the following table:

Age in first half of 1951	Number of quarters required under 1950 amendments	Number of quarters required under former law
75	6	8
70	6	18
65	6	28
62	6	34
61	8	36
60	10	38
59	12	40
58	14	40
57	16	40
56	18	40
55	20	40
50	30	40
45 or under	40	40

BENEFIT PAYMENTS

Under the 1950 amendments benefit payments for beneficiaries on the rolls in September 1950 were increased about 77 percent on the average by means of a conversion table. Examples of the increase in individual amounts are shown in the following table:

If primary insurance benefit under old law was—	The primary insurance amount under new law is—
$10	$20.00
15	30.00
20	37.00
25	46.50
30	54.00
35	59.20
40	64.00
45 or over	68.50

Individuals who meet the eligibility requirements and who retire after August 1950 without six quarters of coverage earned after 1950 also have their benefit payments increased in accordance with the above table. Individuals retiring in the future with six quarters of coverage

obtained after 1950 may use the "new start" average-wage method for determining their benefit amounts if such method provides a higher benefit amount than by use of the aforementioned conversion table. For such individuals the wages earned prior to 1951 are disregarded, and the average wage for benefit purposes is computed for the period elapsing after 1950. The benefit amount is computed under the following formula: 50 percent of the first $100 of the average monthly wage, plus 15 percent of the next $200. Thus, if an individual's average wage after 1950 is $300, the monthly old-age insurance amount is $80, if the average wage is $200, the benefit amount is $65, and so forth. Individuals retiring in the next few years and using the "new start" average-wage method will have their benefit payments about doubled on the average as compared to what they would have received under the old law.

It should be noted that an amount equal to one-half the old-age insurance benefit payable to the retired worker is also provided for his wife at age 65. Thus, if the worker is entitled to the $80 maximum benefit per month, under the new-start method, his wife will receive $40, or a total payment to both of $120. Similarly, one-half the old-age insurance amount payable to a retired worker under the conversion table method outlined above is provided his wife at age 65.

It is too early to evaluate the full effect of the higher benefit level of the 1950 amendments. The new-start average wage method for computing benefits, which requires 6 quarters of coverage obtained after 1950, is not presently reflected in payments to beneficiaries. Moreover, beneficiaries now on the rolls who did not meet the eligibility requirements under the old law—see table above—are entitled to small benefit payments only, because they have been in covered employment for relatively short periods of time. However, the following table does indicate to some extent the change in benefit payments to retired workers, to their wives, and to aged widows and parents of deceased workers between August 1950—when the provisions of the old law were in effect—and January 1951. This table also reflects the rise in the number of beneficiaries under the liberalized eligibility requirements of the 1950 amendments.

OASI benefit payments to retired workers and other aged beneficiaries, August 1950 and January 1951 [1]

TOTAL

	Number	Amount (thousands)
August 1950	2,143,450	$49,452
January 1951	2,716,743	105,271
Net increase	573,293	55,819

[1] This table does not include payments to all OASI beneficiaries—excluded are benefit payments to children and also, except as noted in footnote 2, benefit payments to mothers with child beneficiaries in their care. Payments were made to 2,967,055 beneficiaries of all ages for August 1950 and the amount of payments totaled $61,640,651, as compared to 3,605,235 beneficiaries and total payments of $130,882,816 for January 1951.

OASI benefit payments to retired workers and other aged beneficiaries, August 1950 and January 1951—Continued

RETIRED WORKERS

	Number	Amount (thousands)	Average
August 1950	1,405,592	$37,052	$26.33
January 1951	1,850,207	80,584	43.55
Net increase	444,615	43,532	17.22

WIVES [2]

August 1950	425,604	$5,950	$13.98
January 1951	532,187	12,477	23.45
Net increase	106,583	6,527	9.47

WIDOWS [3]

August 1950	297,999	$6,252	$20.98
January 1951	319,472	11,664	36.51
Net increase	21,473	5,412	15.53

PARENTS

August 1950	14,255	$198	$13.86
January 1951	14,877	546	36.67
Net increase	622	348	22.81

[2] The January 1951 figures include some wives under age 65 who have entitled children in their care, estimated at less than 10,000; the January 1951 figures also include a very small number of dependent husbands of retired women workers for whom payments were authorized for the first time by the 1950 amendments.

[3] The January 1951 figures include a very small number of dependent widowers of deceased women workers for whom payments were authorized for the first time by the 1950 amendments.

Source: Preliminary data of the Old-Age and Survivors Insurance Bureau, Social Security Administration.

ADDITIONAL AMENDMENTS

What additional amendments are needed to improve the protection afforded by the old-age and survivors insurance system against want in old age, would, of course, depend upon the objective of the sponsors of the amendments. There are those who believe the 1950 amendments went too far. On the other hand, those advocating universal coverage point out that less than 45,000,000 jobs are covered by the system today, and that any system falling short of providing universal coverage is inequitable to those individuals excluded from the system.

It is assumed that the objective is to have the coverage of the system broadened to the fullest extent practicable, as has been recommended by the Advisory Council on Social Security of the Senate Committee on Finance of the Eightieth Congress. The Council said:

> The basic protection afforded by the contributory social insurance system under the Social Security Act should be available to all who are dependent on income from work. The character of one's occupation should not force one to rely for basic protection on public assistance rather than insurance. (Old-age and survivors insurance, S. Doc. No. 149, 80th Cong., 2d sess., p. 6.)

FURTHER EXTENSION OF COVERAGE

Farmers make up the largest group still excluded from the old-age and survivors insurance program. Administrative difficulties in covering farm operators no longer appear to be a barrier, as the 1950 amendments provide for coverage of most urban self-employed who will report their net earnings and pay a social-security tax for the first time when filing their income-tax return for 1951. Coverage of farmers could be accomplished by the same method without requiring any more record-keeping than is now necessary for income-tax purposes.

The self-employed professional group now excluded from coverage could be brought under the system in the same manner as other self-employed individuals. These professional groups were excluded under the 1950 amendments, on the request of the representatives of the excluded groups. The principal argument in favor of exclusion from the system was that members of professions generally do not retire as early as do wage earners, but often continue to practice their profession up until a very advanced age. In favor of coverage it can be argued, however, that the old-age and survivors insurance system affords protection to survivors upon the death of the covered individual and that the possibility of involuntary retirement because of disablement makes the protection of the system desirable for professional groups.

Regularly employed domestic workers are covered by the 1950 amendments. "Regularly employed" is defined as employment by a single employer for at least 24 days in a calendar quarter with cash wages of $50 for services in the quarter. Thus, workers who are employed by a number of employers for 1 day each week are excluded from coverage. Such workers need the protection of the system as much, if not more, than those who are regularly employed by a single employer for 24 days in a calendar quarter. As experience is gained from the coverage of the regularly employed domestic workers—the first tax returns for this group are due in April 1951—it may be feasible to extend the system with respect to domestic service.

Regularly employed workers on farms are covered by the 1950 amendments. A farm worker is regularly employed if he has continuous service for one employer for a calendar quarter and then works for the same employer on a full-time basis for at least 60 days and earns cash wages of at least $50 in the next succeeding calendar quarter.

It is obvious that under this definition the coverage of farm workers is limited to those employed by a single farmer over a substantial period of time. To come under the system, a farm laborer must be employed by the same employer for at least 5 months out of a 6-month period. Thus, many farm workers will never be able to obtain the necessary insured status for old-age insurance benefits and will have to depend upon public assistance in their old age if they are in need. A broadening of coverage for workers on farms would decrease the Federal and State costs of old-age assistance in the agricultural States and enable more agricultural workers to assist in financing the cost of their old-age security by making contributions during their working lifetime.

State and local government employees not under a retirement system are afforded coverage by the 1950 amendments at the option of the State. H. R. 6000 as passed by the House of Representatives would have permitted old-age and survivors insurance coverage of State and local employees even though they were under a retirement system, providing the employees and beneficiaries under the State or local system elected coverage by a two-thirds majority of those participating in a written referendum. This provision was deleted from the bill by the Senate Committee on Finance. The exclusion from old-age and survivors insurance of all State and local employees who are under a retirement system means that individuals employed by a State or local unit of government for insufficient period of time to obtain retirement benefits are denied an opportunity to build up credits under the basic Federal system during the period of governmental employment, and thus they may be ineligible for any benefits in their old age. Further consideration of the principle, as contained in H. R. 6000 as passed by the House of Representatives of permitting duplicate coverage of State and local employees may be desirable. Moreover, similar duplicate coverage for Federal employees—under civil-service retirement and old-age and survivors insurance—may be desirable. A study to determine the best method of providing such duplicate coverage was advocated by the Advisory Council on Social Security to the Senate Committee on Finance of the Eightieth Congress—United States Congress, Senate, Old-Age and Survivors Insurance, a report to the Senate Committee on Finance from the Advisory Council on Social Security, Eightieth Congress, second session, Senate Document No. 149, page 20.

The 1950 amendments provided wage credits of $160 for each month of service in the Armed Forces during the period September 16, 1940, to July 24, 1947, inclusive. These wage credits are used for determining whether a veteran has the required insured status for him, his dependents, or his survivors to be entitled to benefit payments. Moreover, the credits are used in computing the amount of benefit payments as if the veteran's military or naval service had been covered employment for which he received wages of $160 per month. No credits are provided, however, for members of the Armed Forces engaged in the Korean conflict. To provide equal treatment for these members of the Armed Forces as was provided for those serving in World War II, the Social Security Act needs to be amended. Unless this is done, the rights acquired from civilian employment covered by old-age and survivors insurance may be lost entirely or the amount of benefits payable in old age or upon death may be decreased because an individual has served in the Armed Forces. The act could be amended to provide automatic wage credits for service rendered after a stated date as was provided by the 1950 amendments for World War II veterans, or else all service in the Armed Forces could be brought under old-age and survivors insurance on a permanent basis. Under the latter method service in the Armed Forces could become the same as civilian employment for old-age and survivors insurance purposes, with contributions to the system being deducted from individual member's service pay as if he had remained in covered civilian employment. The Federal Government would in turn pay the employer's share. This latter method was recommended by the advisory council on social security to the Senate Committee on Finance—ibidem, pages 24–25.

FURTHER INCREASE IN BENEFITS

The increase in benefit payments of about 77 percent on the average for beneficiaries on the old-age and survivors insurance rolls in September 1950 appeared more adequate at the time the 1950 amendments were enacted into law—August 1950—than under present conditions. As the cost of living rises, it becomes more apparent that a revision upward in the benefit level is necessary if the beneficiaries are to be enabled to maintain the standard of living intended by the Congress when the 1950 amendments were being considered. However, the establishment of a higher benefit level, without also extending the system to cover all jobs and to provide for the aged already retired who do not meet the eligibility requirement for old-age benefits, would result in greater inequalities for those excluded from participation in the system.

What exclusion from coverage of the job in which an older worker is employed may mean under present law is indicated in the following example. Assume an individual was 63½ years of age or older prior to January 1951 and he works in a covered job throughout 1951 and the first 6 months of 1952 with earnings of $300 or more per month. He will be eligible upon retirement to a monthly benefit of $80 for himself. Moreover, his wife, if aged 65, will be entitled to $40 per month. Yet the employee's share of the social-security tax under these circumstances would amount to only $81. The employer's share of the tax would be the same or a total employee-employer contribution of $162. Thus more than the total amount paid by the employee and his employer would be paid out in benefits to the worker and his wife in the first 3 months that they were on the rolls. For the older worker who has not been in covered employment, only public assistance is available upon his retirement, if he can meet the need test of the State of his residence.

OLD-AGE PENSIONS FOR ALL GROUPS AT AGE 60

Proposals have been made to eliminate the Federal Government's responsibility for grants-in-aid to the States for old-age assistance and to establish a Federal system of payments for all aged in the Nation regardless of need. These proposals sometimes take the form of extending the old-age and survivors insurance program to all those who are dependent upon income from work, or in other words, universal coverage. It has also been suggested that coupled with universal coverage for the working population, provision should be made for the payment of benefits to the aged who have retired from work without meeting the present eligibility requirements. Also, proposals have been made to abolish the State-Federal old-age assistance program and the old-age and survivors insurance program and to substitute therefor a new Federal system for old-age security. This plan is the sound one and is the one embodied in my bill, House bill 2678, the Townsend plan.

The sponsors of these various methods of meeting the economic hazards of old age, however, do agree that old-age assistance with its needs test that varies from State to State is not a satisfactory way to provide income to a large segment of the aged population of the Nation. In January 1951 more than 2,750,000 individuals received old-age assistance at a cost of more than $120,000,000 to the Federal, State and local governments. The costs of the program have increased each year since it first began to operate in 1936. In 1940 total expenditures were less than $500,000,000, as compared to more than $1,500,000,000 in the fiscal year ending in June 1950.

In addition to the rising costs of the program, the proponents of substitute proposals cite the sharp variation from State to State in payments to individuals as well as the difference in the number of people aided in proportion to population aged 65 or over. In January 1951 the average payment for the United States was $43.40, with the high average payment being $81.23, in Colorado, and the low, $18.42, in Mississippi. Moreover, in 1950 the number of aged individuals on the rolls in proportion to the estimated population aged 65 and over the State varied from more than 80 per 100 to less than 10 per 100. Thus, the adequacy of old-age assistance often depends upon where a needy aged person happens to reside, rather than on the extent of his need for aid.

Under a plan to pay benefits to all groups at age 60, equitable treatment for all aged individuals could be provided. This, of course, could be provided, also, if the age requirement were retained at age 65. Moreover, by the extension of old-age and survivors insurance coverage to all jobs and providing benefits for the retired workers now ineligible for benefits or by inaugurating a substitute plan for old-age and survivors insurance and old-age assistance, the inequitable position of those not now included under old-age and survivors insurance could be corrected.

In support of a lower age requirement than the present 65 years, the United Mine Workers' plan of paying benefits at age 60 is often cited, as is the civil-service retirement system which affords full benefits at age 62.

Cited in opposition to the proposal are the increased costs that would be entailed. For example, under the present limited coverage of old-age and survivors insurance, the estimated cost of an age requirement of 60 years is estimated at 2 percent of payroll on a level premium basis. Translated into terms of dollars, this would be equivalent to about $2,500,000,000 per year on an average basis—somewhat less than this in the

early years of operation and somewhat more in the later years. It might be mentioned that the cost of the present law on a level premium basis is about 6 percent of payroll, or about $7,500,000,000 per year on an average basis—actually, only about $2,000,000,000 per year at the present time, and as much as $11,000,000,000 per year eventually.

As to a proposal for a universal flat benefit payment of $50 per month for all persons aged 60 and over, the total cost would range from about $11,000,000,000 at the present time to about $19,000,000,000 ultimately—in 50 years—with an average cost of about $17,000,000,000 per year. However, if this benefit were payable only to those who were not working, the cost would be reduced to about $2,000,000,000 at present, ranging up to $16,000,000,000 per year eventually, and averaging about $14,000,000,000 per year—estimated costs prepared by Robert J. Myers, Chief Actuary, Social Security Administration, who was assigned as Actuary to the House Committee on Ways and Means and the Senate Committee on Finance when H. R. 6000 was being considered by the Eighty-first Congress.

The following table is of interest in a study of social security as now administered:

Old-age assistance: Recipients and payments to recipients, by State, January 1951 [1]

[Exclusive of vendor payments for medical care and cases receiving only such payments]

State	Number of recipients	Payments to recipients: Total amount	Payments to recipients: Average	Percentage change from December 1950 in—: Number	Percentage change from December 1950 in—: Amount	Percentage change from January 1950 in—: Number	Percentage change from January 1950 in—: Amount
Total [2]	2,766,866	$120,084,486	$43.40	−0.1	+0.1	+0.6	−2.2
Alabama	81,530	1,669,518	20.48	−.1	−.1	+4.9	+4.3
Alaska	1,602	85,116	53.13	−.1	−6.9	+2.8	−7.1
Arizona	14,546	758,676	52.16	+.5	+.2	+14.6	+12.9
Arkansas	68,967	1,785,316	25.89	(3)	−.1	+12.2	+15.2
California	272,576	18,468,728	67.76	+1.6	+2.5	−.9	−5.1
Colorado [2]	51,765	4,205,033	81.23	+.3	+5.1	+4.2	+14.6
Connecticut	19,906	1,198,266	60.20	+.1	+1.8	+6.3	+9.1
Delaware	1,601	46,085	28.79	−.8	−1.0	−1.7	−.9
District of Columbia	2,836	126,511	44.61	+.7	+16.6	+1.6	+6.5
Florida	69,381	2,711,376	39.08	−.1	−.4	+2.9	−.5
Georgia	102,073	2,432,460	23.83	−.3	−.2	+4.7	+8.8
Hawaii	2,316	77,007	33.25	−.6	−.9	−2.5	+.5
Idaho	11,453	535,112	46.72	+.1	−.2	+1.4	+.7
Illinois	119,281	5,210,955	43.69	−.5	−.8	−7.6	−8.9
Indiana	50,917	1,809,153	35.53	−.5	−1.2	−1.1	−2.0
Iowa	49,221	2,424,482	49.26	−.2	−.1	(3)	+.6
Kansas	39,159	1,918,582	48.99	−.4	−.7	+1.5	−1.2
Kentucky	67,440	1,376,781	20.41	−.5	−.7	+10.7	+6.8
Louisiana	118,208	5,512,608	46.63	−.5	−.6	−2.5	−3.7
Maine	15,301	655,679	42.85	−.1	(3)	+4.7	+3.5
Maryland	11,793	435,952	36.97	−.3	+.1	−1.3	−1.6
Massachusetts	102,084	6,272,896	61.45	+.1	−.7	+3.2	−3.5
Michigan	97,722	4,472,642	45.77	−.5	−.5	−1.5	−3.5
Minnesota	55,480	2,620,849	47.24	−.4	−1.0	−.8	−4.6
Mississippi	61,534	1,133,397	18.42	−1.3	−5.8	−.6	−3.6
Missouri	132,521	$5,731,969	$43.25	−.1	−.1	+2.6	+2.6
Montana	11,777	624,369	53.02	−.1	+3.7	+1.6	+2.8
Nebraska	23,128	1,002,008	43.32	−.6	−.8	−3.3	−4.1
Nevada	2,736	142,196	51.97	−.2	−.5	+6.6	+2.6
New Hampshire	7,445	342,727	46.03	−.2	−.1	+2.0	+6.8
New Jersey	23,925	1,144,101	47.82	−.7	−.7	−1.3	−3.5
New Mexico	10,410	392,228	37.68	+1.3	+1.2	+3.5	+8.7
New York	117,223	6,368,507	54.33	−.2	+1.7	−2.3	−2.6
North Carolina	61,602	1,367,864	22.20	+.1	+.2	+5.6	+7.9
North Dakota	9,093	452,627	49.78	+.2	+.7	+1.9	+7.4
Ohio	122,372	5,475,386	44.74	−1.1	−3.5	−3.7	−7.7
Oklahoma	99,577	4,499,468	45.19	−.3	−.4	−1.6	−14.6
Oregon	23,621	1,226,423	51.92	−.5	−.6	+1.1	−.6
Pennsylvania	84,033	3,234,350	38.49	−.6	−1.4	−9.7	−12.8
Rhode Island	10,057	450,538	44.80	−.4	−.7	−1.4	−4.2
South Carolina	42,288	1,049,178	24.81	+.3	+.5	+5.7	+13.6
South Dakota	12,225	481,126	39.36	(3)	(3)	+.5	+1.5
Tennessee	66,345	1,994,725	30.07	−.4	−1.0	+6.5	+3.2
Texas	224,436	7,352,423	32.76	+.4	+.2	+1.9	−2.1
Utah	9,923	453,020	45.65	−.4	+1.9	−2.0	−1.1
Vermont	6,967	249,720	35.84	+.4	+.8	+3.0	+5.4
Virginia	19,743	427,251	21.64	−.4	−.1	+3.8	+6.1
Washington	73,100	4,501,732	61.58	−.6	−1.6	+1.3	−3.2
West Virginia	26,807	710,157	26.49	−.6	−1.0	+2.6	−.2
Wisconsin	52,475	2,220,654	42.32	−.2	−.5	+.9	−.1
Wyoming	4,345	246,559	56.75	−.1	−.5	+2.8	+5.9
Puerto Rico [4]	16,387	122,902	7.50	−.4	−.4	-------	-------
Virgin Islands [4]	600	6,459	10.76	+1.7	+1.4	-------	-------

[1] For definition of terms see the Bulletin, January 1951, p. 21. All data subject to revision.
[2] Includes 4,047 recipients under 65 years of age in Colorado and payments to these recipients. Such payments are made without Federal participation. Excludes Puerto Rico and the Virgin Islands, for which January data are not available.
[3] Decrease of less than 0.05 percent.
[4] Represents data for December 1950.

Mr. Speaker, as shown from this report on the social-security program now in force together with the amendments adopted by the Congress in 1950 we have failed to solve the problem of social security for the aged of America and particularly those who do not come under the program of insured workers. It follows that a program as sponsored by the Townsend organization and embodied in my bill, H. R. 2678, is more equitable and in the long run would involve less expense and would bring within its protection all of the elderly citizens of the United States 60 years of age and over who are in need.

The objective of this legislation is to provide every adult citizen in the United States with equal basic Federal insurance, to permit retirement with benefits at the age of 60, and to cover total disability from whatever cause for certain citizens under 60; to give protection to widows with children; to provide an ever-expanding market for goods and services through the payment and distribution of such benefits in ratio to the Nation's steadily increasing ability to produce with the cost of such benefits to be carried by every citizen in proportion to the income privileges he enjoys.

Such a program would obviate the haphazard provisions of the existing social-security law which gives protection and coverage to selected groups of aged citizens but leaves millions of other aged equally in need completely out of protection. On the other hand the existing social security plan is financed by contributions which really are provided by all of the citizens since the cost of production must include all expenses, including those contributed by employers and employees for social security.

I trust that all Members of the House who are interested in dealing fairly with these aged citizens and giving equal protection to all, will sign discharge petition 4 and bring out for consideration this all-inclusive Federal social security program for the aged.

(Mr. ANGELL asked and was given permission to revise and extend his remarks and include certain tables and extraneous matter.)

PRESIDENT TRUMAN'S STATEMENT IN CONNECTION WITH THE SIGNING OF THE DEFENSE PRODUCTION ACT AMENDMENTS OF 1951

Mr. McCORMACK. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD and include the statement made by the President yesterday in connection with the signing of the amendments to the Defense Production Act.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

(The statement referred to follows:)

I have reluctantly signed S. 1717, the Defense Production Act amendments of 1951, which was passed by the Congress yesterday.

Unless this measure had become law, the powers necessary for carrying out our defense program would have expired tonight.

This new act continues, with little change, the Government's authority to control production, channel materials, and aid business in the interest of national defense. To some extent, the new act strengthens these powers, particularly with respect to aids for small business.

The act also continues rent control and permits recontrol of rents in certain critical areas. The production and rent provisions of the act are thus relatively adequate, though they do not meet all our needs.

But the inflation control provisions of the act are gravely deficient. If these had been the only provisions of the act, I would have vetoed it. We will not be able to hold down rising prices with this act, and I am going to ask the Congress to amend it to give us adequate controls.

This act will do great harm to our price and wage controls. The full extent of the damage cannot be determined until the executive agencies have had sufficient time to study the legislation in detail. Many of the new provisions are complicated and vague and it has not been possible, in the brief time since Congress passed the law, to estimate fully all of its effects on present price ceilings and on the administration of price control.

HIGHER PRICES PREDICTED

But it is already clear that the principal effect of the new amendments will be to raise ceiling prices for the manufacturer, the wholesaler and the retailer. Moreover, the act prohibits further roll-backs in the price of beef, and makes effective roll-backs on other vital cost-of-living commodities practically impossible. In general, the act will roll price ceilings forward from their present levels, pushing them up to heights that we cannot yet foresee.

Furthermore, the act greatly increases and complicates the administrative difficulties of price control. As a result, even after prices have reached the new and higher levels which the law requires, we may not be able to keep them from going still higher. One of the worst provisions of the act, the Butler-Hope amendment, wipes out slaughter quotas on beef, thus encouraging the return of black markets.

Another provision of the act which will operate against the interest of the American people is the Capehart amendment. This complicated amendment will force price ceilings up on thousands of commodities, clear across the board. It is like a bulldozer, crashing aimlessly through existing pricing formulas, leaving havoc in its wake.

If we are to prevent the weakening of our economy, we must change these provisions and others just as bad. As soon as the executive agencies can complete their study. I intend to urge Congress to revise and strengthen this law, point by point, to give us the tools we need to fight inflation.

I understand that several Members of the Congress, recognizing the deficiencies of this act, have already introduced legislation to restore authority for slaughtering quotas. This is certainly a step in the right direction. But it is only one of the respects in which this law needs immediate improvement.

In future months, as our defense production takes a larger and larger share of our output, we have to expect that pressure on prices will increase. Only a tremendous drop in private investment or consumer spending could keep rising expenditures for defense from bringing on new pressures toward higher prices. And these pressures could be aggravated, at any time, by a change for the worse in the international situation.

WAGE ADJUSTMENTS NECESSARY

To the extent that this act permits prices and the cost of living to rise, it will be necessary to allow reasonable adjustments in wages. We cannot ask the working people of this country to reduce their standard of living just to pay for the higher profits this act provides for business. And then we would be caught in another price-wage spiral.

If we are to prevent a serious drop in the purchasing power of the dollar, we must have a good, strong price-control law to help us through the period ahead. Without that kind of law, we cannot protect ourselves from the frightful damage of renewed inflation.

S. 1717 is not that kind of law. It is a law that will push prices up. It is a law that will increase the costs of business and the cost of our defense program to the taxpayer. It is a law that threatens the stability of our economy in the future. Moreover, it prevents us from giving any further price relief to the millions of consumers already penalized by the price rises in the fall of 1950.

We should never forget that more than half the families in this country had no increases in income during 1950; some of them actually had their incomes reduced last year. To all these people, inflation is not a theoretical problem for the future, but a real problem and a terrible deprivation right now.

These families and all our other families need real protection against inflation. The Government will not be able to give them such protection unless and until the Congress repairs the damage done by this new act.

EXTENSION OF REMARKS

By unanimous consent, permission to extend remarks in the Appendix to the RECORD, or to revise and extend remarks, was granted to:

Mr. CELLER (at the request of Mr. BRYSON) and to include an article from Time magazine entitled "The General" which is estimated by the Public Printer to cost $184.50.

Mr. RHODES and to include a magazine article.

Mr. ZABLOCKI in two instances and to include extraneous matter.

Mr. PICKETT (at the request of Mr. WILSON of Texas) and to include extraneous matter.

Mr. SHEPPARD and to include an article taken from Fortune magazine entitled "The Arrival of Henry Kaiser," which is estimated by the Public Printer to cost $272.

Mr. VELDE in two instances.

Mr. PHILLIPS.

Mr. JOHNSON (at the request of Mr. COLE of New York) in two instances.

Mr. BAKER and to include a newspaper article.

Mr. WILLIAMS of Mississippi to revise and extend the remarks he expects to make in the Committee of the Whole and include extraneous matter.

Mr. BAILEY to include the transcript of a radio address by O. R. Strackbein under the caption "Czechoslovak trade and Mr. Oatis."

Mr. BROOKS in two instances and to include extraneous matter.

Mr. HESELTON to revise and extend the remarks he expects to make in the Committee of the Whole during the consideration of the bill H. R. 3298 and include extraneous matter.

Mr. LANE in three instances and to include extraneous matter.

Mr. BAKEWELL (at the request of Mr. MARTIN of Massachusetts).

Mr. BUDGE (at the request of Mr. MARTIN of Massachusetts).

Mr. LARCADE in four instances, in each to include extraneous matter.

Mr. SMITH of Wisconsin.

Mr. JUDD in three instances, in each to include extraneous matter.

Mr. KEATING in three instances, in each to include extraneous matter.

Mr. BOYKIN and to include a statement by John R. Steelman.

Mr. O'HARA to revise and extend the remarks he made in the Committee today and include certain excerpts from telegrams.

Mr. MCCORMACK and to include a letter received from Alexander J. Chaplikas, president of the American Lithuanian Council, together with an accompanying resolution.

Mr. BENDER.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. DOLLINGER (at the request of Mr. HELLER), Tuesday through Friday, on account of illness.

Mr. GRANT (at the request of Mr. ANDREWS), from August 1 to August 10, on account of official business.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

Mr. STANLEY, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and a joint resolution of the House of the following titles, which were thereupon signed by the Speaker:

H. R. 629. An act to authorize the sale of certain allotted land on the Blackfeet Reservation, Mont.;

H. R. 4329. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of such District for the fiscal year ending June 30, 1952, and for other purposes; and

H. J. Res. 303. Joint resolution to provide housing relief in the Missouri-Kansas-Oklahoma flood disaster emergency.

ADJOURNMENT

Mr. McCORMACK. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 36 minutes p. m.) the House adjourned until tomorrow, Thursday, August 2, 1951, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

670. A letter from the Secretary of the Army, transmitting a report of claims paid pursuant to the Federal Tort Claims Act as amended (28 U. S. C.); to the Committee on the Judiciary.

671. A letter from the Assistant Secretary of Defense, transmitting a draft of proposed legislation entitled "A bill to authorize the use of the incompleted submarine *Ulua* as a target for explosive tests, and for other purposes; to the Committee on Armed Services.

672. A communication from the President of the United States, transmitting a proposed supplemental appropriation for the fiscal year 1952 in the amount of $2,431,000 for the Displaced Persons Commission (H. Doc. No. 215); to the Committee on Appropriations, and ordered to be printed.

673. A letter from the Administrator, Veterans' Administration, transmitting a draft of a proposed bill entitled "A bill to extend the authority of the Administrator of Veterans' Affairs to appoint and employ retired officers without affecting their retired status"; to the Committee on Armed Services.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk

for printing and reference to the proper calendar, as follows:

Mr. DAWSON: Committee on Expenditures in the Executive Departments. Ninth Intermediate Report of the Committee on Expenditures in the Executive Departments, a report on the flood-stricken areas of Kansas and Missouri and the necessity for appropriate Federal action to prevent similar disasters (Rept. No. 779). Referred to the Committee of the Whole House on the State of the Union.

Mr. LANE: Committee on the Judiciary. House Joint Resolution 285. Joint resolution to authorize appropriate participation by the United States in commemoration of the one hundred and fiftieth anniversay of the establishment of the United States Military Academy; without amendment (Rept. No. 780). Referred to the Committee of the Whole House on the State of the Union.

Mr. SPENCE: Committee on Banking and Currency. H. R. 3176. A bill to amend the act entitled "An act to authorize the coinage of 50-cent pieces to commemorate the life and perpetuate the ideals and teachings of Booker T. Washington," approved August 7, 1946; without amendment (Rept. No. 782). Referred to the Committee of the Whole House on the State of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. SPENCE: Committee on Banking and Currency. Senate Joint Resolution 78. Joint resolution to make the restrictions of the Federal Reserve Act on holding office in a member bank inapplicable to M. S. Szymczak when he ceases to be a member of the Board of Governors of the Federal Reserve System; without amendment (Rept. No. 781). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. RICHARDS:

H. R. 5020. A bill to promote the foreign policy and provide for the defense and general welfare of the United States by furnishing assistance to friendly nations in the interest of international security; to the Committee on Foreign Affairs.

By Mr. ALLEN of Louisiana:

H. R. 5021. A bill to authorize the Secretary of Agriculture to make certain requirements in the sale of national forest timber and for other purposes; to the Committee on Agriculture.

By Mr. BOLLING:

H. R. 5022. A bill to provide payment for property losses resulting from the 1951 floods in the States of Kansas, Missouri, and Oklahoma, and for other purposes; to the Committee on the Judiciary.

By Mr. JOHNSON:

H. R. 5023. A bill to prohibit the construction, operation, or maintenance of any project for the storage or delivery of water within or affecting any national park or monument; to the Committee on Interior and Insular Affairs.

By Mr. BOGGS of Delaware:

H. R. 5024. A bill to authorize the charging of tolls to cover the maintenance, repair, and operation of the Delaware Memorial Bridge and its approaches after the establishment of a sinking fund for amortization of the cost of such bridge and approaches; to the Committee on Public Works.

By Mr. GREENWOOD:

H. R. 5025. A bill to amend section 201 of the Federal Civil Defense Act of 1950, by adding thereto a new subsection authorizing financial contributions to the States for the purpose of providing compensation for injury or death sustained by any person serving in the United States Civil Defense Corps; to the Committee on Armed Services.

By Mr. MORRISON:

H. R. 5026. A bill to amend the Federal Civil Defense Act of 1950 to provide for Federal contributions to enable the States to provide compensation for members of the United States Civil Defense Corps suffering injuries or death in performing their duties; to the Committee on Armed Services.

By Mr. TAYLOR:

H. R. 5027. A bill to provide an increased penalty for the importation of narcotic drugs, and for other purposes; to the Committee on Ways and Means.

By Mr. MITCHELL:

H. R. 5028. A bill to authorize the construction of housing for workers to be employed at the Naval Shipyard, Bremerton (Puget Sound), Wash.; to the Committee on Armed Services.

By Mr. BOGGS of Louisiana:

H. R. 5029. A bill to amend title 18, United States Code, to increase the criminal penalty provided for persons convicted of gathering or delivering certain defense information to aid a foreign government in time of peace; to the Committee on the Judiciary.

H. R. 5030. A bill to prevent subversive individuals and organizations from appearing as surety for bail in criminal cases; to the Committee on the Judiciary.

H. R. 5031. A bill to require the Attorney General to compile and maintain a list of subversive organizations; to the Committee on the Judiciary.

H. R. 5032. A bill to provide for the detention and prosecution of Communists and former Communists, to provide that peacetime espionage may be punished by death, and for other purposes; to the Committee on the Judiciary.

By Mr. MULTER:

H. R. 5033. A bill to amend the Housing Act of 1950 to equalize the benefits of veterans to that of nonveterans, and for other purposes; to the Committee on Banking and Currency.

By Mr. SCRIVNER:

H. J. Res. 305. Joint resolution to provide Federal aid and financial assistance to local agencies to enable them to provide permanent housing for persons left homeless in disaster areas; to the Committee on Banking and Currency.

By Mr. COX:

H. Res. 364. Resolution creating a select committee to conduct an investigation and study of foundations and other comparable organizations; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BYRNE of New York:

H. R. 5034. A bill for the relief of John Vassilatos; to the Committee on the Judiciary.

By Mr. CHUDOFF:

H. R. 5035. A bill for the relief of J. Hibbs Buckman and A. Raymond Raff, Jr., executors of the estate of A. Raymond Raff, deceased; to the Committee on the Judiciary.

By Mr. REED of New York:

H. R. 5036. A bill for the relief of Jacob J. Schaftenaar; to the Committee on the Judiciary.

SENATE

THURSDAY, AUGUST 2, 1951

(Legislative day of Wednesday, August 1, 1951)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

Dr. J. Arthur Rinkel, minister, Central Methodist Church, Winona, Minn., offered the following prayer:

Almighty God, father of all mankind, deepen our sense of relationship and accountability to Thee. Instill in our hearts a great love of truth, and enlighten our minds that we may comprehend the truth. Give us a longing for righteousness, believing that "Righteousness exalteth a nation." Save us from the follies we see in others and direct us in the path of wisdom.

Bless, O God, all who guide the destiny of mankind in this trying hour, and may it please Thee to use our President, and all in authority with him, to lead our Nation and our world to peace in our time.

"Save us from weak resignation
To the evils we deplore.
* * * * *
Set our feet on lofty places,
Gird our lives that they may be
Garnered with all Christlike graces,
In our fight to make men free.
Grant us wisdom, grant us courage,
That we fail not man nor Thee!"

In the name of Christ. Amen.

THE JOURNAL

On request of Mr. MCFARLAND, and by unanimous consent, the reading of the Journal of the proceedings of Wednesday, August 1, 1951, was dispensed with.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Miller, one of his secretaries, and he announced that on August 1, 1951, the President had approved and signed the following acts:

S. 263. An act to amend section 5 of the act entitled "An act to authorize the apprehension and detention of insane persons in the District of Columbia, and providing for their temporary commitment in the Government Hospital for the Insane, and for other purposes," approved April 27, 1904, as amended; and

S. 673. An act to permit the exchange of land belonging to the District of Columbia for land belonging to the abutting property owner or owners, and for other purposes.

COMMITTEE MEETINGS DURING SENATE SESSION

On request of Mr. KEFAUVER, and by unanimous consent, the Committees on Armed Services and Foreign Relations were authorized to meet this afternoon during the session of the Senate.

On request of Mr. HOEY, and by unanimous consent, the Armed Services Committee and the Foreign Relations Committee, sitting in joint session, were authorized to meet during the session of the Senate this afternoon.